



**CITY COUNCIL AGENDA
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
NOVEMBER 19, 2024, 5:30 PM**

The City of Porterville is allowing for electronic viewing of City Council Meetings. Porterville City Council Meetings will be live streamed on YouTube at
<https://www.youtube.com/@cityofporterville4149>

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

City of Porterville – City Council Meeting of November 19, 2024

Please use the following link below to join the webinar:
<https://us06web.zoom.us/j/84738287903?pwd=LBV1c9lrObLGdYAc7PTdmDchlYwZYa.1>

Or via Telephone: **1-669-900-6833** Webinar ID: **847 3828 7903** Passcode: **024674**

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 54956.95 – Liability Claim: Claimant: Guadalupe Herrera. Agency claimed against: City of Porterville.
- 2** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: City of Porterville v. Tulare County Regional Transit Agency and Abul Hassan, Tulare County Superior Court Case No. VCU312913, and related cross-action.
- 3** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: Pastor Isabel Vela v. Porterville Police Department, Tulare County Superior Court Case No. PCU311765.
- 4** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: Amber Moreno v. City of Porterville et al., U.S. District Court, Eastern District, Fresno Division, Case No. 1:21-CV-00865-JLT-BAM.

5 - Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Four (4) cases in which facts are not yet known to potential plaintiffs.

6 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Two (2) Cases.

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

Pledge of Allegiance Led by Vice Mayor Carrillo

Invocation

ORAL COMMUNICATIONS

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. 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. City Commission and Committee Meetings
 1. Parks & Leisure Services Commission - November 7, 2024
 2. Library & Literacy Commission - November 12, 2024
 3. Arts Commission
 4. Animal Control Commission
 5. Youth Commission - November 13, 2024
 6. Transactions and Use Tax Oversight Committee (TUTOC)
- II. Staff Informational Reports
 1. Water Conservation Phase IV Status Update - October 2024

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. Approval of Draft Minutes of November 5, 2024**
Re: Considering approval of the City Council draft Minutes of November 5, 2024.
- 2. Authorization to Repair City Well No.15**

Re: Consideration of approval for the repair of City Well No. 15, located on the South West Corner of Morton Ave. and G St. by Carver Pump, for an amount not to exceed \$11,518.

3. Authorization to Replace Police Vehicle

Re: Consideration to authorize staff to purchase one 2024 Ford Explorer Police Interceptor for \$48,460.00 plus tax, license, and fees; and the purchase of emergency equipment upfit for the vehicle, including Motorola radio, in the amount of \$23,932.29.

4. Authorization to Amend Approved Purchase of Routeware Waste Collection Equipment In-Cab Technology and Billing Systems

Re: Council to consider the correction to the authorization of purchase price for Routeware Waste Collection Equipment In-Cab Technology and Billing Systems software and equipment.

5. Authorization to Reject All Bids for Mini Side Load Refuse Truck RFP No. 24-25-SR1985 and Reissue with Revised Specifications

Re: Council to consider rejecting all bids for RFP No. 24-25-SR1985 for two mini-side load refuse trucks and direct staff to reissue the RFP with revised specifications to meet budgetary requirements.

6. Amendment No. 1 to 4Creeks, Inc. Newcomb Street & Mulberry Avenue Traffic Signal Design Service Agreement

Re: Consideration to authorize Addendum No. 1 to the 4 Creeks, Inc. Service Agreement at an agreed-upon fee of \$10,861, for the design of an extension of an existing storm drain main along Newcomb Street from approximately 550 feet (550') north of Mulberry Avenue southward to this intersection, related to the Newcomb Street & Mulberry Avenue Traffic Signal Project.

7. Authorization to enter into General Services Agreement with Western Pump, Inc. for Fuel System Upgrades

Re: Consider the approval of a General Services Agreement with Western Pump, Inc. for fuel system upgrades at the City Corporation Yard and Porterville Airport at a total project cost not to exceed \$365,000.

8. Authorization to enter into General Services Agreement with Northern United Fence for Security Fencing Project

Re: Consideration to approve a General Services Agreement with Northern United Fence for the installation of security fencing at the City's Corporation Yard, at a total project cost not to exceed \$150,000.

9. Authorization to enter into General Services Agreement with BigBelly Solar, LLC for Trash Receptacles Project

Re: Consideration to approve a General Services Agreement with Bigbelly Solar, LLC for providing trash receptacles to enhance waste management efforts within city limits, at a total cost not to exceed \$270,000.

10. Request for Authorization to Extend the Zero-Fare Program for Public Transportation Services

Re: Consider authorizing the extension of the zero-fare program for fixed-route and ADA paratransit services until June 30, 2025, supporting increased transit access and operational efficiency during the ongoing development of a regional fare system.

11. Reauthorization of Professional Services Agreement with Clean Energy for Compressed Natural Gas (CNG) Fueling Station Maintenance Services with FTA Terms and Conditions

Re: Consideration to approve the revised professional services agreement with Clean Energy for the maintenance of the City's CNG fueling station.

12. Update and Approval of FY 2023 and FY 2024-25 Transit Programs and Transportation Development Act (TDA) Claims

Re: Consideration to approve revised FY 2023 TDA Claim and updated FY 2024-25 Transit Program of Projects to align with updated funding allocations and project priorities, ensuring compliance with Tulare County Association of Governments and Federal Transit Administration requirements.

13. Cooperative Agreement with Tulare County Association of Governments (TCAG) for SB 125 Program Funding

Re: Consider approval of a Cooperative Agreement with the Tulare County Association of Governments (TCAG) for the allocation of SB 125 Program funds which will provide \$11,000,000 in funding for the City's Zero-Emission Maintenance Facility Project.

14. Request For Will Serve Letter - 1065 E. Cleo Ave.

Re: Considering approval and issuance of a Will Serve Letter to authorize a second water service connection at the property.

15. Approval of Community Civic Event - Rotary Club of Porterville and Porterville Chamber of Commerce - Children's Christmas Parade – December 5, 2024 (Alternatively on December 12, 2024, in the Event of Rain)

Re: Consideration to approve the Community Civic Event application submitted by the Rotary Club of Porterville and the Porterville Chamber of Commerce to hold the Children's Christmas Parade on December 5, 2024, or alternatively on December 12, 2024, in the event of rain, on December 5, from 7:00 PM to 9:00 PM.

16. Council Member Requested Agenda Item - Consideration of "Merry Christmas" Banner for Main Street

Re: Consideration to add to the Council Agenda of December 3, 2024, an item to consider the purchase and installation of a "Merry Christmas" banner for Main Street.

17. 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 relative to flood event.

SECOND READINGS

18. Second Reading - Ordinance No. 1908, Amending Series 200 of the Porterville Development Ordinance

Re: Amending Series 200, Section 201.02 of the Porterville Development Ordinance regarding off-site parking in Residential Zone districts.

SCHEDULED MATTERS

19. Consideration of Establishing a Standing Cannabis Committee

Re: Council to consider abolishing the Ad Hoc Cannabis Committee and considering the establishment of a standing Cannabis Committee to review cannabis-related matters.

AB 1234 REPORTS

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

1. CalVANS - November 14, 2024
2. Porterville Area Development Authority (PADA)- November 15, 2024
3. Tulare County Association of Governments (TCAG) - November 18, 2024

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 December 3, 2024, 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.



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: 1. Water Conservation Phase IV Status Update - October 2024

SOURCE: Public Works

COMMENT: The City has continued to implement an active water conservation approach, conserving water and providing flexibility to the community. As of October 1, 2024, the City transitioned from Phase III to Phase IV of its Water Conservation Plan. The plan applies to all municipal water users within or outside the city limits.

The Phase IV plan decreases 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 on 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.

Violations of prohibited activities are considered infractions and are punishable by fines of up to \$500 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 September 2024 show that five (5) notices of violations were issued for water waste, and no administrative citations were issued.

Water production for October 2024 shows a three percent (3%) decrease from the five-year average. The monthly production for October was 312 million gallons, which is a twenty-two percent (22%) decrease compared to October 2013, when it was 402 million gallons. Residential consumption for October 2024 was 113 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 October 2015 through October 2024. Porterville's cumulative total production conservation through October 2024 is twenty percent (20%). The cumulative total of GPCD for the City of Porterville's conservation efforts will be reflected from October 2015 through October 2024. Porterville's cumulative total GPCD conservation through October 2024 is twenty-five percent (25%).

Under the February 2, 2016, emergency regulation, the City of Porterville received a revised conservation standard of twenty-eight percent (28%) with an additional two percent (2%) reduction for climate adjustment, making the City's conservation standard twenty-six percent (26%). After reviewing the Water Board's Self-Certification criteria for drought impacts on water supplies, the City 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 urban water conservation performance with a preparedness to implement conservation standards as necessary. California Governor Gavin Newsom signed Executive Order N-10-21 on July 8, 2021, urging all Californians to voluntarily reduce their water use by fifteen percent (15%) compared to their prior-year levels due to excessive drought conditions. Water production for the City system shows a two percent (2%) increase from October 2023 to October 2024. 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 (20%). The City of Porterville's Water Conservation Plan Phase IV meets the requirements for this shortage (Level 2). California Governor Gavin Newsom signed Executive Order N-3-23 on February 13, 2023, stating the state has experienced one of the wettest three-week periods on record. With this order, California Governor Gavin Newsom removed the need to voluntarily reduce water use by fifteen percent (15%), as stated in the previous Executive Order N-10-21.

RECOMMENDATION: Information Only

ATTACHMENTS:

1. Monthly Production Status October 2024
2. Monthly Production Status GPCD October 2024
3. Drought Response Phase III Flyer -
4. Drought Response Phase IV Flyer

Appropriated/Funded:

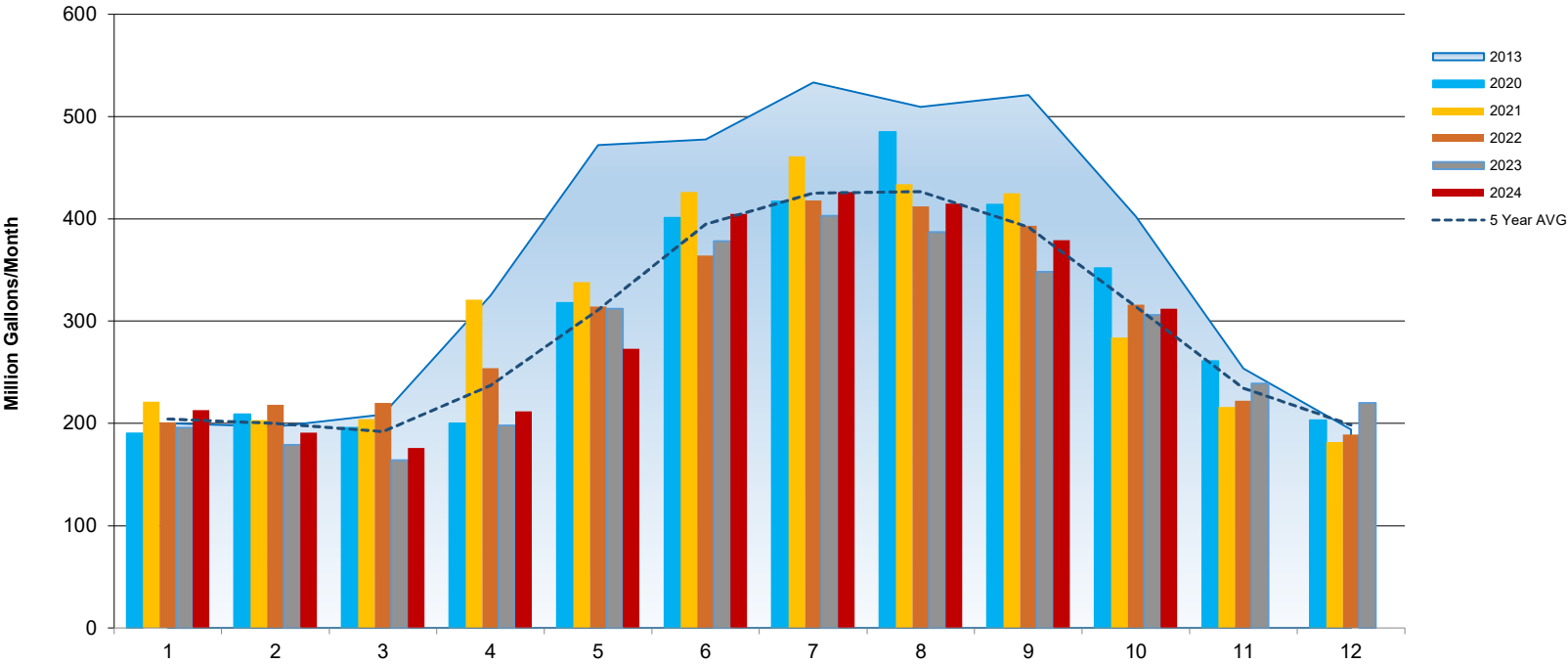
Review By:

Department Director:

Michael Knight, Assistant City Manager

Final Approver: Patrice Hildreth, City Manager

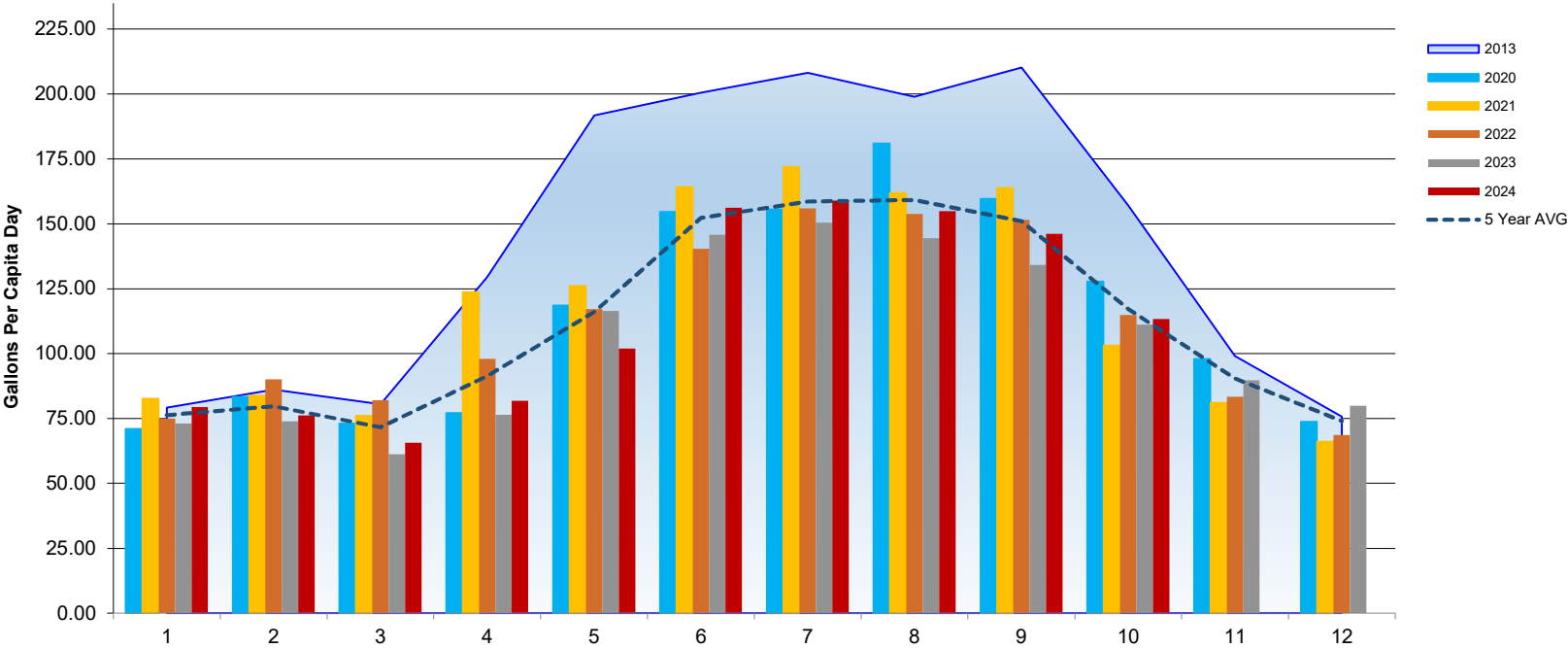
Monthly Production Status & Cumulative Total June 2015 Through
October 2024 Production Comparison to 2013 & 5 Year Average



	Production	Cumulative Total 20%										
	2020	-5%	6%	-6%	-38%	-33%	-16%	-22%	-5%	-21%	-13%	3%
	2021	11%	3%	-2%	-1%	-28%	-11%	-14%	-15%	-18%	-29%	-15%
	2022	0%	11%	5%	-22%	-33%	-24%	-22%	-19%	-25%	-21%	-13%
	2023	-2%	-14%	-31%	-39%	-34%	-21%	-24%	-24%	-33%	-20%	-6%
	2024	6%	-3%	-16%	-35%	-42%	-15%	-20%	-18%	-27%	-22%	13%

Percent Comparison to 2013 Production

Monthly Production Status & Cumulative Total June 2015 Through October 2024 Gallon Per Capita Day Comparison to 2013 & 5 Year Average



GPCD Cumulative Total 25%

	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%	-22%	-28%	-27%	-16%	-9%
	2023	-8%	-14%	-24%	-41%	-39%	-27%	-28%	-27%	-36%	-29%	-10%	6%
	2024	0%	-12%	-18%	-37%	-47%	-22%	-24%	-22%	-30%	-28%		

Percent Comparison to 2013 Production



DROUGHT RESPONSE Phase III

Mandatory Odd/Even Watering Schedule, based on address.
Residents will be allowed **TWO** days a week to water lawns and landscapes. No watering allowed on Mondays, Thursdays, and 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.

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 III water conservation regulations could result in citations with fines up to **\$500**.

DROUGHT RESPONSE PHASE III

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

Mandatory Odd/Even Watering Schedule

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

■ Odd Address
 ■ Even Address

ODD NUMBER ADDRESSES

If your address ends with an “odd” number, 1, 3, 5, 7, or 9, your watering days are Tuesday and Saturday *only*.

OR

EVEN NUMBER ADDRESSES

If your address ends with an “even” number, 0, 2, 4, 6, or 8, your watering days are Wednesday and 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**

**Excessive water
runoff prohibited**

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

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

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

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

**NO WATERING ON
MONDAYS, THURSDAYS,
AND FRIDAYS.**



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**

**Excessive water
runoff prohibited**

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

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

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

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

**NO WATERING
MONDAY THROUGH
FRIDAY.**



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Approval of Draft Minutes of November 5, 2024

SOURCE: Administrative Services

COMMENT: Presented for Council's approval are the draft Minutes of November 5, 2024.

RECOMMENDATION: That the Council approve the draft Minutes of November 5, 2024.

ATTACHMENTS: 1. Draft Minutes of November 5, 2024

Appropriated/Funded:

Review By:

Department Director:
Yuliana Andrade, Administrative Services Director

Final Approver: Yuliana Andrade, Administrative Services Director

**CITY COUNCIL MINUTES
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
NOVEMBER 5, 2024, 5:30 PM**

Call to Order: 5:30 p.m.

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

ORAL COMMUNICATIONS

- Ed McKervery, Porterville, expressed his ongoing concern about the selection of a City Manager before the upcoming election.
- Stan Green, Porterville, hopes that the City Council will postpone their decision on a City Manager until the new city council is in place.
- Josh Flowers, Strathmore, believes that the council should interview all six candidates but ultimately let the new council choose the next City Manager.
- Jesse Vasquez, Porterville, agrees that the new council should be responsible for selecting the City Manager.
- AJ Rivas, Porterville, questioned why the council cannot wait until the new council is seated to decide the new City Manager.

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

- 1** - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN: 253-160-064, 253-160-065, 253-160-068, 253-160-069, 253-160-070, 261-125-018, 261-125-019, And 261-125-020. Agency Negotiator: Patrice Hildreth and Jason Ridenour. Negotiating Parties: City of Porterville and James Gregory Shelton. Under Negotiation: Terms and Price.
- 2** - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: Porterville Municipal Airport, Lot 9. Agency Negotiator: Julia Lew. Negotiating Parties: City of Porterville and Arrow Falcon Industries. Under Negotiation: Terms and Price.
- 3** - Government Code Section 54956.95 – Liability Claim: Claimant: Khamphouk Inthavong. Agency Claimed Against: City of Porterville.
- 4** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: Pastor Isabel Vela v. Porterville Police Department, Tulare County Superior Court Case No. PCU311765.
- 5** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel -- Existing Litigation: Hill International, Inc. v. City of Porterville, Tulare County Superior

Court Case No. PCU309701.

6 - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: City of Porterville v. Tulare County Regional Transit Agency and Abul Hassan, Tulare County Superior Court Case No. VCU312913.

7 - Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant exposure to Litigation: Five (5) cases in which facts are not yet known to potential plaintiffs.

8 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Two (2) cases.

9 - Government Code Section 54957 - Public Employment: City Manager.

6:36 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION TAKEN IN CLOSED SESSION

Council Member Greg Meister left the meeting at the end of Closed Session.

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

A- On a MOTION made by Council Member Greg Meister, and SECONDED by Mayor 3. Martha A. Flores the City Council unanimously rejected the claim filed by Khamphouk Inthavong.

Documentation: M.O. 01-110524

Disposition: Claim rejected.

The Pledge of Allegiance was led by Council Member Weyhrauch.

Invocation – a member of the public came forward to speak.

PRESENTATIONS

Employee of the Month - Dratin Wood
Outstanding Business Honoree

ORAL COMMUNICATIONS

- Kathleen Harris, Porterville, provided the council with an Animal Control Commission report.
- Brock Neeley, Porterville, spoke of his recent participation and experience at the Porterville Police Department Trunk or Treat event.
- Porterville Exchange Club gave introductions and presented the City Council with the donation of the Veterans Day Parade Banner.

REPORTS

- I. Staff Informational Reports

1. Charitable Car Washes Quarterly Report Calendar Year 2024
2. Code Enforcement Quarterly Report Fiscal Year 2024-2025 (July - September 2024)
3. City Council Member Appointments Attendance Quarterly Report FY 2024-2025 (July - September 2024)
4. City Commission And Committee Attendance Quarterly Report FY 2024-2025 (July - September 2024)
5. Building Permit Activity Quarterly Report FY 2024-2025 (July - September 2024)
6. Golf Course Quarterly Report Fiscal Year 2024-2025 (July - September 2024)
7. Street Performance Measure Quarterly Report FY 2024-2025 (July - September 2024)

CONSENT CALENDAR

There were no items pulled from the Consent Calendar for discussion.

COUNCIL ACTION: MOVED by Vice Mayor Kellie Carrillo, SECONDED by Council Member Raymond Beltran that the City Council approve Items Nos. 1-25.

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

1. APPROVAL OF DRAFT MINUTES OF OCTOBER 15, 2024

Recommendation: That the Council approve the draft Minutes of October 15, 2024.

Documentation: M.O. 02-110524

Disposition: Approved.

2. APPROVAL OF REPAIRS TO FIRE ENGINE

Recommendation: That the City Council approve payment to Burton's Fire, Inc. for a total cost of \$11,531.11 for repairs to a Porterville Fire Department Fire Engine.

Documentation: M.O. 03-110524

Disposition: Approved.

3. AUTHORIZATION TO UPFIT POLICE VEHICLE

Recommendation: That the City Council authorize payment to Cook's Communication for the listed upfit equipment in the amount of \$17,272.73.

Documentation: M.O. 04-110524

Disposition: Approved.

4. AUTHORIZATION TO PURCHASE VEHICLE TO SUPPORT ENCAMPMENT ABATEMENT

Recommendation: That the City Council authorize the purchase of a 2024 Chevrolet Silverado 1500, to support encampment abatement, from American Chevrolet for \$48,772.72.

Documentation: M.O. 05-110524

Disposition: Approved.

5. AUTHORIZATION TO PURCHASE SIDELOADER GRIPPER ASSEMBLY

Recommendation: That the City Council:

1. Authorize the purchase of the side loader lower gripper assembly from One Source Parts at a cost not to exceed \$7,854 (inclusive of all parts, taxes, freight, and a 10% contingency); and
2. Authorize payment upon receipt of parts.

Documentation: M.O. 06-110524

Disposition: Approved.

6. AUTHORIZATION TO PURCHASE AN AUTO THEFT INVESTIGATION VEHICLE

Recommendation: That the City Council:

1. Authorize staff to identify and enter negotiations for the purchase of a vehicle up to a cost of \$50,000 with a 10% contingency. If needed, the 10% contingency would be funded by the police department's vehicle depreciation account.
2. Authorize payment upon satisfactory delivery of the vehicle.

Documentation: M.O. 07-110524

Disposition: Approved.

7. AUTHORIZATION TO PURCHASE VETERANS DAY RUN PARTICIPANT SHIRTS

Recommendation: That the City Council approve the purchase of the Veterans Day Run race shirts from Axiom Graphics at a cost of \$11.20 per unit, plus an

\$2.00 more per unit for any size above extra large.

Documentation: M.O. 08-110524

Disposition: Approved.

8. AUTHORIZATION TO PURCHASE TECHNOLOGY EQUIPMENT FOR THE COUNCIL CHAMBERS

Recommendation: That City Council approve the purchase of the technology equipment from GovConnection, Inc., to support the technology upgrades in the Council Chambers, at a cost of \$12,664.72, with an additional ten percent (10%) contingency of \$1,266.47, for a total of \$13,931.19.

Documentation: M.O. 09-110524

Disposition: Approved.

9. AUTHORIZATION TO DISTRIBUTE REQUEST FOR PROPOSALS - IMPACT AND CONNECTION FEE NEXUS STUDY

Recommendation: That the City Council authorize staff to distribute a Professional Services Request for Proposals for an Impact and Connection Fee Nexus Study.

Documentation: M.O. 10-110524

Disposition: Approved.

10. REIMBURSEMENT FOR MASTER PLAN IMPROVEMENTS (ADULT DAY HEALTHCARE CENTER LOCATED AT 262 N SECOND ST)

Recommendation: That the City Council authorize a reimbursement to Golden Valley Pipeline in a total amount not to exceed \$80,000 from Water Revolving funds upon completion of the work and receipt of an approved invoice from the Engineering & Project Management Director.

Documentation: M.O. 11-110524

Disposition: Approved.

11. INTENT TO SET A PUBLIC HEARING - PARKS IMPACT FEES

Recommendation: That City Council direct the City Clerk to notice a Public Hearing to consider the implementation of the City of Porterville's Parks Impact Fees update at the meeting of January 21, 2025.

Documentation: M.O. 12-110524

Disposition: Approved.

12. CITY EASEMENT CONVEYANCE TO SOUTHERN CALIFORNIA EDISON
(SCE) COMPANY - WELL NO. 34

Recommendation: That the City Council:

1. Approve the draft Resolution Authorizing a Grant Deed of Easement to Southern California Edison Company;
2. Accept Southern California Edison's request to have the City convey an easement to extend electrical service and related facilities down Redondo Street to the Well No. 34 site;
3. Authorize the Mayor to sign the Grant of Easement; and
4. Authorize the City Engineer to mail the signed Grant of Easement to Southern California Edison company for recordation.

Documentation: Resolution No. 81-2024

Disposition: Approved.

13. AUTHORIZATION TO EXECUTE AGREEMENT - NAVIGATION CENTER
EXPANSION PROJECT

Recommendation: That the City Council:

1. Finds that construction and operation of the expansion of the Porterville Navigation Center as proposed herein is categorically exempt from the California Environmental Quality Act under CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures.
2. Authorizes the Mayor to execute the project contract with TMJ Construction, Inc of Bakersfield (as a "Joint Venture" with Andrew Goodwin Design) for the design and installation of the expansion to the Porterville Navigation Center in the amount of \$2,459,994;
3. Authorizes progress payments up to one hundred percent (100%) of the contract amount; and
4. Directs staff to bring an item back to City Council at a future meeting to allocate the additional \$305,994 needed to fully fund the construction portion of the project.

Documentation: M.O. 13-110524

Disposition: Approved.

14. AUTHORIZATION TO EXECUTE CONSULTANT AGREEMENT -
EMERGENCY OPERATIONS CENTER & PUBLIC SAFETY
HEADQUARTERS DESIGN

Recommendation: That the City Council:

1. Authorize the Engineering & Project Management Director to

- execute the Consultant Service Agreement for the design of the Emergency Operations Center & Public Safety Headquarters Project with COAR Design Group in the amount of \$1,172,500;
2. Authorize a design contract contingency in the amount of \$77,500; and
 3. Authorize progress payments up to one hundred percent (100%) of the contract amount.

Documentation: M.O. 14-110524

Disposition: Approved.

15. RENEWAL OF AIRPORT LEASE - SEWER OPERATING FUND

Recommendation: That the City Council approve the renewal of the Lease Agreement between the Sewer Operating Fund and the Airport Enterprise Fund and authorize the Mayor to sign said Lease Agreement.

Documentation: M.O. 15-110524

Disposition: Approved.

16. RENEWAL OF AIRPORT LEASE - SPORTS COMPLEX PARKING

Recommendation: That the City Council approve the renewal of the Lease Agreement between the City of Porterville and the Airport Enterprise Fund and authorize the Mayor to sign said Lease Agreement.

Documentation: M.O. 16-110524

Disposition: Approved.

17. CONSIDERATION OF APPROVAL FOR RENEWAL OF BUXTON RETAIL RECRUITMENT SOFTWARE

Recommendation: That the City Council approve payment of the annual fee of \$36,750 for Buxton retail recruitment software services through October 11, 2025.

Documentation: M.O. 17-110524

Disposition: Approved.

18. CONSIDERATION OF APPROVAL OF SIDE LETTER AGREEMENT FOR THE MANAGEMENT CONFIDENTIAL SERIES

Recommendation: That the City Council:

1. Approve the side letter agreement amending the Employee Pay and Benefit Plan pertaining to the Management Confidential

- Series employees; and
2. Authorize staff to execute the agreement and amend the Employee Pay and Benefit Plan to reflect the change.

Documentation: M.O. 18-110524

Disposition: Approved.

19. FINANCIAL STATUS REPORTS

Recommendation: That the City Council accept the Financial Status Reports as presented.

Documentation: M.O. 19-110524

Disposition: Approved.

20. QUARTERLY INVESTMENT PORTFOLIO

Recommendation: That the City Council accept the Quarterly Investment Portfolio Summary Report.

Documentation: M.O. 20-110524

Disposition: Approved.

21. REQUEST FOR DONATION OF SURPLUS FIRE HOSE TO US & MEXICO FIREFIGHTERS UNITED FOUNDATION

Recommendation: That the City Council authorize the donation of surplus equipment to US & Mexico Firefighters United Foundation.

Documentation: M.O. 21-110524

Disposition: Approved.

22. APPROVAL OF COMMUNITY CIVIC EVENT - PORTERVILLE KIWANIS - HOLIDAY VENDOR MARKET - DECEMBER 1, 2024

Recommendation: That the City Council approve the Community Civic Event application from Porterville Kiwanis Club to hold the Holiday Vendor Market on December 1, 2024, subject to the requirements and restrictions contained in the Application and Agreement, Exhibit A, Exhibit B, and Exhibit C.

Documentation: M.O. 22-110524

Disposition: Approved.

23. CONSIDERATION OF RESCHEDULING THE COMMUNITY CIVIC EVENT - MOTHER'S UNITED AGAINST GANG VIOLENCE "UNITED BY KINDNESS"

Recommendation: That the City Council authorize the rescheduling of the Mother's United Against Gang Violence "United by Kindness" event from Saturday, November 2, 2024, to Saturday, November 9, 2024.

Documentation: M.O. 23-110524

Disposition: Approved.

24. REQUEST FOR STREET CLOSURE: 30TH ANNUAL MYERS CHRISTMAS MEMORIAL TREE LIGHTING - DECEMBER 10, 2024

Recommendation: That the City Council approve the closure of "E" Street, between Putnam and Cleveland Avenues, on December 10, 2024, from 5:00 p.m. to 9:00 p.m., subject to the specified conditions.

Documentation: M.O. 24-110524

Disposition: Approved.

25. STATUS AND REVIEW OF DECLARATION OF LOCAL FLOOD 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.

Documentation: M.O. 25-110524

Disposition: Approved.

PUBLIC HEARINGS

26. CONSIDERING ESTABLISHMENT OF FEES ASSOCIATED WITH THE MAIN STREET BANNER PROGRAM

Recommendation: That the City Council:

1. Conduct a Public Hearing to solicit comment on the proposed Main Street over-the-street banner fees; and
2. Consider adoption of the draft Resolution approving the new Main Street over-the-street application permit processing fee of \$20, and installation/removal fee of \$300 if performed by City staff.

City Manager Hildreth introduced the item and Parks and Leisure Services Director Donnie Moore presented the staff report.

Mayor Flores opened the Public Hearing at 7:00 p.m. and closed the Public Hearing at 7:00 p.m. when no one came forward to speak.

COUNCIL ACTION: MOVED by Council Member Raymond Beltran, SECONDED by Council Member Donald Weyhrauch that the City Council adopt the draft resolution approving the new Main Street over-the-street application permit processing fees of \$20.00 for the Main Street banner application permit and \$300.00 for the installing and removal of Main Street banners.

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

Documentation: Resolution No. 82-2024

Disposition: Approved.

27. CONSIDERATION OF AMENDMENT TO SERIES 200 OF THE PORTERVILLE DEVELOPMENT ORDINANCE FOR FAMILY HEALTHCARE NETWORK

Recommendation: That the City Council:

1. Hold the noticed public hearing and consider the testimony provided;
2. Find that the proposed project is exempt from CEQA under CEQA Guidelines Sections 15061(b)(3);
3. Consider the draft ordinance, an Ordinance of the City Council of the City of Porterville Amending Series 200 of the Porterville Development Ordinance Regarding Off-Site Parking in Residential Zone Districts; and
4. If so approved, give first reading by title only, and order the Ordinance to print.

City Manager Hildreth introduced the item and Contracted City Planner Jeff O'neal presented the staff report.

Mayor Flores opened the Public Hearing at 7:06 p.m. and closed the Public Hearing at 7:06 p.m. when no one came forward to speak.

COUNCIL ACTION: MOVED by Council Member Donald Weyhrauch, SECONDED by Mayor Martha A. Flores that the City Council find the the proposed project is exempt from CEQA under CEQA Guidelines Sections 15061(b)(3); and approve first reading of the ordinance being, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING SERIES 200, SECTION 201.02 OF THE PORTERVILLE DEVELOPMENT ORDINANCE REGARDING THE

RESIDENTIAL ZONE DISTRICTS, waive further reading, and order the ordinance to print.

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

Documentation: M.O. 26-110524

Disposition: Approved.

SCHEDULED MATTERS

28. AUTHORIZATION TO ADOPT THE PARKS MASTER PLAN

Recommendation: That the City Council:
1. Approve the Parks Master Plan as proposed; and
2. Approve the draft resolution authorizing the adoption of the Parks Master Plan.

City Manager Hildreth introduced the item and Engineering and Project Management Director Javier Sanchez presented the staff report.

COUNCIL ACTION: MOVED by Mayor Martha A. Flores, SECONDED by Vice Mayor Kellie Carrillo that the City Council adopt the draft resolution authorizing the adoption of the Parks Master Plan.

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

Documentation: Resolution No. 83-2024

Disposition: Approved.

29. CONSIDERATION OF SPONSORSHIP OF 2024 TULE RIVER TRIBE POWWOW SCHEDULED FOR NOVEMBER 7-11, 2024

Recommendation: That the City Council consider sponsorship of the 2024 Tule River Tribe Powwow.

City Manager Hildreth introduced the item and Deputy City Manager Jason Ridenour presented the staff report.

COUNCIL ACTION: MOVED by Council Member Raymond Beltran, SECONDED by Mayor Martha A. Flores that the City Council approve the sponsorship of \$5,000 for the upcoming Annual TuleRiver Powwow scheduled to take

place November 7-11, 2024, at the Eagle Mountain Casino.

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

Documentation: M.O. 27-110524

Disposition: Approved.

AB 1234 REPORTS

1. Tulare County Taskforce on Homelessness - October 16, 2024 – no report was provided.
2. Tulare County Association of Governments (TCAG) - October 21, 2024
Mayor Flores stated that the meeting progressed quickly and highlighted two key items of importance: the adoption of a resolution approving the Transportation Development Act Claim for the City of Porterville and the resolution approving the Porterville UZA 5307 Split Letter.
3. Tulare County Economic Development Corporation (TCEDC) - October 23, 2024
Mayor Flores reported on those in attendance, a presentation that was provided, a project and client services update, and staff updates.

ORAL COMMUNICATIONS

None.

OTHER MATTERS

- Council Member Beltran praised Pizza Factory as the Outstanding Business Honoree, shared his happiness about the safe Halloween, and encouraged citizens to vote.
- Council Member Weyhrauch discussed the Quarterly Reports, praised the work on the Parks Master Plan, and highlighted the effective management of city resources and funds.
- Vice Mayor Carrillo congratulated Dratin Wood, the Employee of the Month recipient, as well as the Outstanding Business Honoree Pizza Factory; she expressed her excitement for the upcoming Veterans Day Run and Parade; and additionally, she addressed a comment made by a member of the public during Oral Communications, stating that the remarks were false and inaccurate.
- Mayor Flores expressed gratitude to Vice Mayor Carrillo for her comments, while also noting Carrillos' conflict of interest regarding the Tule River Tribe. The Mayor confirmed that Vice Mayor Carrillo has not participated in any related decisions. Additionally, Mayor Flores recognized several individuals for their contributions to the city, including Human Resources Aide Aileen Calderon, Acting Chief Deputy City Clerk Fernando Gabriel-Moraga, and Executive Assistant Lori Halleck. She reiterated her previous remarks at council meetings concerning candidates wishing to campaign for council

seats. The Mayor expressed pride in the city's accomplishments and mentioned her involvement in various events, such as the League of California Cities Conference, an interview with a Granite Hills High School student, and community events like the Domestic Violence Candlelight Vigil and the Día de los Muertos celebration.

- City Manager Patrice Hildreth reminded the council of the police department's upcoming swearing-in ceremony.
- Deputy City Manager Jason Ridenour wished everyone a good evening.

CLOSED SESSION

None.

ADJOURNMENT –

The Council adjourned at 7:39 p.m. to the meeting of November 19, 2024, at 5:30 p.m.

Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk

SEAL

Martha A. Flores, Mayor



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to Repair City Well No.15

SOURCE: Public Works

COMMENT: City Well No.15, located on the southwest corner of Morton Avenue and G Street, has experienced a failure of its submersible motor. To satisfy the City's water system demands, it is imperative that all wells are operational, making it essential that Well No.15 be repaired immediately to restore the City's overall water system pressure and production capabilities.

Staff contacted three (3) local pump companies for quotes to replace the submersible motor and repair parts. The quotes are as follows:

Carver Pump Service	\$10,471
Zim Industries	\$11,796
S.A. Camp Pump and Drilling Company	\$13,613

Carver Pump submitted the lowest quote, securing the quote for the motor and repair parts for City Well No.15. In addition, the repair parts are immediately available, expediting the repair of City Well No.15. The Water Department Staff will perform all the repairs and install the submersible motor.

The Water Operating Fund will fund the total project cost, not exceeding \$11,518 (including all parts, taxes, and a 10% contingency).

RECOMMENDATION: That City Council:

1. Direct the Finance Director to initiate a Purchase Order to Carver Pump for an amount not to exceed \$11,518 (inclusive of all parts, taxes, and contingency) for the replacement parts for City Well No. 15; and
2. Direct the Finance Director to make payment to Carver Pump upon receipt of the invoice approved by the Public Works Director.

ATTACHMENTS: 1. City Well No. 15 Location Map

Item No. 2.

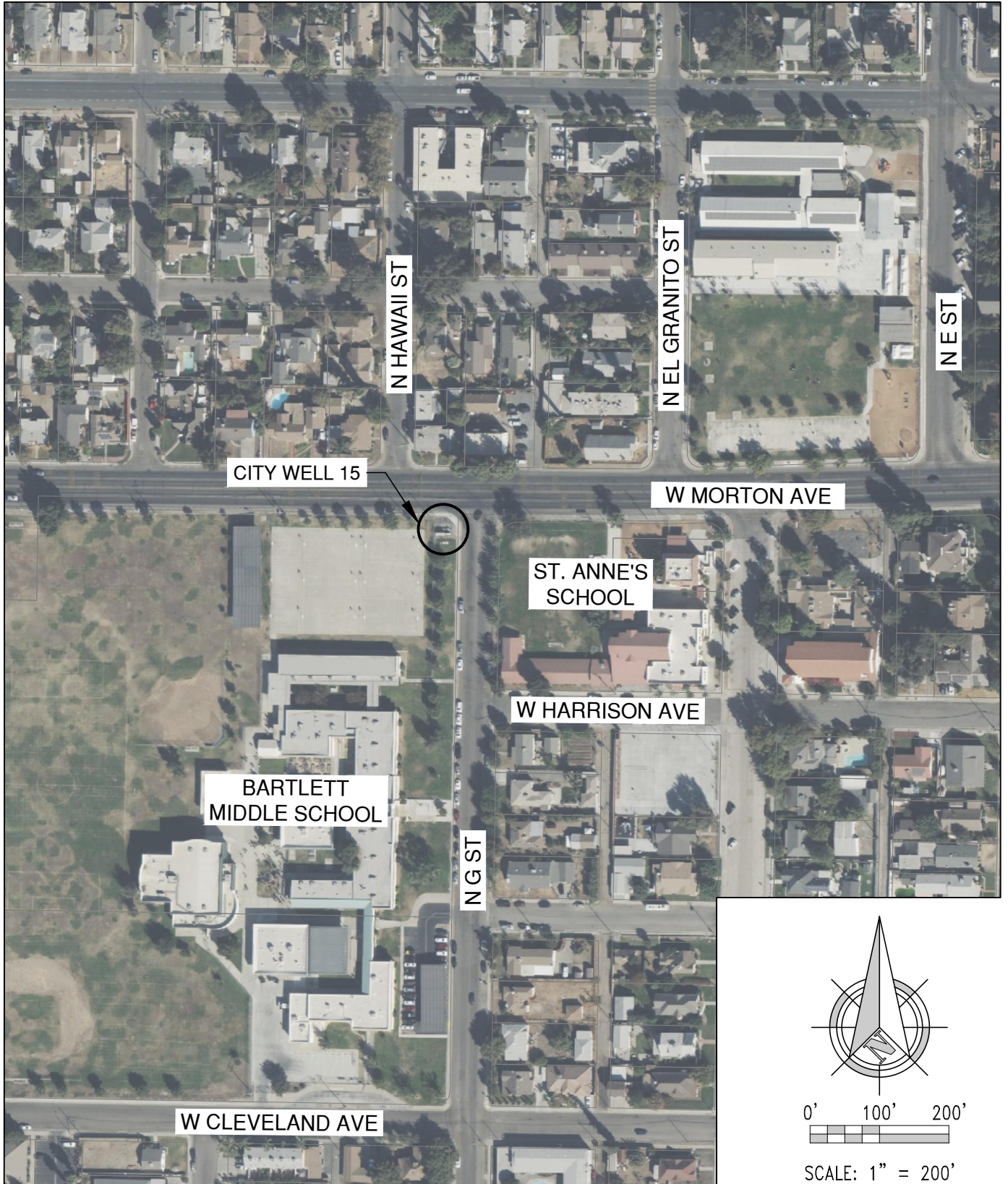
2. Carver Pump Service Quote
3. S. A. Camp Pump And Drilling Company Quote
4. Zim Industries Inc. Quote

Appropriated/Funded:

Review By:

Department Director:
Michael Knight, Assistant City Manager

Final Approver: Patrice Hildreth, City Manager



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

CITY WELL 15

DRAWN BY	GG
CHECKED BY	
SCALE	1" = 200'
DATE	3/12/2024

SHEET
1
OF
1

S. A. CAMP PUMP AND DRILLING COMPANY
P.O. BOX 82575 BAKERSFIELD CA 93380-2575
17876 ZERKER RD BAKERSFIELD CA 93308
PHONE (661) 399-2976 FAX (661) 399-8063 CA LIC# 346951
----ESTIMATE----

CUSTOMER: CITY OF PORTERVILLE
ATTN: JOHNNY

DATE: 9/25/24
PHONE: 559-756-3515

QTY	DESCRIPTION	AMOUNT
1	60 HP 480 VOLT 3 PHASE HITACHI SUB MOTOR	
350'	#4 WIRE	
2	#4 SPLICE KITS	
2	#6 SPLICE KITS	
2	#8 SPLICE KITS	

**TOTAL AMOUNT FOR THE ABOVE MATERIAL
AND 9-1/4% SALES TAX...**

13,612.55

NOTE: WARRANTY FOR SUB MOTOR IS ONE YEAR

NOTE: THE ABOVE PRICE DOES NOT INCLUDE DELIVERY

NOTE: S. A. CAMP PUMP CO CANNOT AND DOES NOT
GUARANTEE WATER QUALITY OR QUANTITY

THE ABOVE ESTIMATE AMOUNT MAY CHANGE DUE TO
UNFORSEEN VENDOR PRICING.

QUOTED BY: JOSE FELIX

JF/jr

SALES ORDER

**ZIM INDUSTRIES INC.**

4545 E. Lincoln • Fresno, CA 93725

09529

DATE 11-5-28SOLD TO City of Porterville

SHIP TO _____

ADDRESS _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

CITY _____ STATE _____ ZIP _____

PHONE # Attn: Jon Pruitt

TERMS _____

SALESMAN		P.O. #	SHIP VIA	DATE REQUIRED	F.O.B.		
	QUANTITY	STOCK #	DESCRIPTION	PRICE	PER	AMOUNT	
1			"Quote"				
2	1		6" 60 H.P. Hitachi Motor			7,200	
3			460V 3600 RPM				
4	356		# 4-3 Flat Jacketed Suspenders 10		FT	3,500	
5	2		# 4 Splice Kits	22	00 EA	44	
6	2		# 6 Splice Kits	17	50 EA	35	
7	2		# 8 Splice Kits	9	00 EA	18	
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
41							
42							
43							
44							
45							
46							
47							
48							
49							
50							
51							
52							
53							
54							
55							
56							
57							
58							
59							
60							
61							
62							
63							
64							
65							
66							
67							
68							
69							
70							
71							
72							
73							
74							
75							
76							
77							
78							
79							
80							
81							
82							
83							
84							
85							
86							
87							
88							
89							
90							
91							
92							
93							
94							
95							
96							
97							
98							
99							
100							
101							
102							
103							
104							
105							
106							
107							
108							
109							
110							
111							
112							
113							
114							
115							
116							
117							
118							
119							
120							
121							
122							
123							
124							
125							
126							
127							
128							
129							
130							
131							
132							
133							
134							
135							
136							
137							
138							
139							
140							
141							
142							
143							
144							
145							
146							
147							
148							
149							
150							
151							
152							
153							
154							
155							
156							
157							
158							
159							
160							
161							
162							
163							
164							
165							
166							
167							
168							
169							
170							
171							
172							
173							
174							
175							
176							
177							
178							
179							
180							
181							
182							
183							
184							
185							
186							
187							
188							
189							
190							
191							
192							
193							
194							
195							
196							
197							
198							
199							
200							
201							
202							
203							
204							
205							
206							
207							
208							
209							
210							
211							
212							
213							
214							
215							
216							
217							
218							
219							
220							
221							
222							
223							
224							
225							
226							
227							
228							
229							
230							
231							
232							
233							
234							
235							
236							
237							
238							
239							
240							
241							
242							
243							
244							
245							
246							
247							
248							
249							
250							
251							
252							
253							
254							
255							
256							
257							
258							
259							
260							
261							
262							
263							
264							
265							
266							
267							
268							
269							
270							
271							
272							
273							
274							
275							
276							
277							
278							
279							
280							
281							
282							
283							
284							
285							
286							
287							
288							
289							
290							
291							



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to Replace Police Vehicle

SOURCE: Police

COMMENT: In October 2024, Unit # 3337, a 2014 Dodge Charger, was involved in a not-at-fault on-duty collision. The estimated cost to repair this vehicle was estimated to be between \$3,500 and \$6,500. The vehicle currently has over 90,000 miles and is over 10 years old. As such, the vehicle is due for replacement as it is at its end of life.

Department staff requests authorization to purchase a replacement vehicle through Phil Long Dealership under their National Government Fleet Sales Contract. The Department is requesting authorization to purchase this vehicle per Resolution 35-93, which authorizes no-bid purchases through a cooperative purchase program. The Department has identified Phil Long Dealership as a provider of such a program for the desired vehicle, available under The Interlocal Purchasing System Contract #220304. Phil Long Dealership is a current City-authorized vendor and has vehicles available under their National Government Fleet Sales Master Contract #220304. Phil Long Dealership is a turn-key source for police vehicles and has provided a quote of \$48,460.00. This price does not include the upfitting of emergency vehicle equipment.

The vehicle is a new pursuit-rated 2024 Ford Interceptor Explorer model, which the dealership has in stock. It was determined that the Interlocal Purchasing System Contract for the purchase of this Ford Explorer was the best available price and the only known readily available vehicle and is the standard by which many agencies are purchasing their fleet vehicles. This contract price is available to the City.

In addition to the vehicle, department staff is requesting to upfit the vehicle with the necessary emergency equipment, Motorola radio and other tools before placing the vehicle into service.

Staff is requesting that the City Council authorize the negotiation for the purchase of the Ford Explorer up to a total cost of \$48,460.00, which is based on the Manufacturer's Suggested Retail Price minus the applicable government discount. The upfit of the vehicle with emergency equipment including a police Motorola radio, will cost \$23,932.29; however, several components may be able to be salvaged from the crashed police unit, which could reduce the aforementioned costs.

Through sound fiscal management and savings in the Police

Department's vehicle depreciation, the funds for this vehicle and associated equipment are available through the department's Equipment Replacement Fund. Due to the unique purchasing parameters, staff is requesting a 10% contingency based on the total purchasing price and associated equipment total of \$72,392.29.

RECOMMENDATION: That the City Council:

1. Authorize staff to purchase one 2024 Ford Explorer Police Interceptor for \$48,460.00 plus tax, license, and fees; and
2. Authorize staff to purchase emergency equipment, including Motorola radio, for \$23,932.29 and provide payments upon satisfactory delivery of the police vehicle and upfit of the emergency equipment.

ATTACHMENTS:

1. Porterville PD 2024 Non Eco-Boost PIU Quote 10-29-24
2. Porterville PD 2024 PIU Window Sticker
3. UPFIT Cooks Estimate- Porterville PD 24 FPIU Patrol
4. RADIO QUOTE-2878240-1APX6500UHFE5Remote

Appropriated/Funded:

Review By:

Department Director:
Jake Castellow, Chief of Police

Final Approver: Patrice Hildreth, City Manager



QUOTE TO: Porterville Police Department
ATTN: Lt. Mark Azevedo

Crash Replacement

QUOTE NUMBER	102924-1
QUOTE DATE	October 29, 2024
Agency PO #.	
CES PO#	
TERMS	Due on Receipt
SALES REP	Herman Sanchez
SHIPPED VIA	Driver
F.O.B.	
PREPAID or COLLECT	

PRICE AGREEMENT : T.I.P.S. (The Interlocal Purchasing System) # 220304 2024 Ford Police Explorer Interceptor Non Eco- Boost Exterior: Agate Black			
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Ford Utility Interceptor, Mid Size, four Door, AWD Police Pursuit Rated (Incl. Dark Car Feature, Driver Side Spotlight, Backup Camera, Police Engine Idle, Reverse Sensing, BLIS, Global Unlock, Keyless Entry)	48,310.00	\$48,310.00
1	Available Government Discount	(1,800.00)	(\$1,800.00)
1	Transport To: 350 North D Street Porterville, CA 93257 ** Vehicles will not come with hubcaps due to Manufacturer No longer making hubcaps**	1,950.00	\$1,950.00
Additional Information:			48,460.00
Proposal valid for 30 Days			
			\$48,460.00
			Total
			AMOUNT

DIRECT ALL INQUIRIES TO:
Herman Sanchez
(505) 250-9388
email: hsanchez@phillong.com

Phil Long Ford of Denver
7887 W. Tufts Ave.
Denver, CO 80123

THANK YOU FOR YOUR BUSINESS!



ford.com

VEHICLE DESCRIPTION

POLICE INTERCEPTOR

RG A27632

2024 UTILITY AWD
119" WHEELBASE
3.3L TI-VCT V6 FFV ENGINE
10-SPEED AUTO TRANSMISSION

EXTERIOR
AGATE BLACK METALLIC
INTERIOR
EBONY CLOTH FRT/VINYL REAR

STANDARD EQUIPMENT INCLUDED AT NO EXTRA CHARGE			
EXTERIOR	INTERIOR		
• 18" H.D.STEEL WHEELS	• 35/30/35 SPLIT VINYL REAR	• UNIVERSAL TOP TRAY	• TRANSMISSION-10-SPEED AUTO
• 255/60R18 A/S BSW	• A/C W/AUTOMATIC CLIMATE	FUNCTIONAL	SAFETY/SECURITY
POLICE TIRES	CONTROL, DUAL ZONE	• AM/FM/MP3/BLUETOOTH & USB	• 75 MPH REAR-CRASH TESTED
• CLASS III HITCH RECEIVER	• BLACK VINYL FLOOR COVERING	• COLUMN MOUNTED SHIFTER	• ADVANCETRAC™ WITH RSC®
• DUAL EXHAUST SYSTEM	• CERTIFIED SPEEDOMETER	• ENGINE OIL COOLER	• AIRBAGS - FRONT AND SIDE
• DUAL POWER MIRRORS	• CLOTH BUCKET FRONT SEATS	• FULL-TIME ALL WHEEL DRIVE	• AIRBAGS - SAFETY CANOPY
• FULL SIZE 18" SPARE W/TPMS	• CONSOLE MOUNTING PLATE	SYSTEM	• SOS POST CRASH ALERT SYS
• HEADLAMPS - AUTO, LED	• ENGINE HOUR / IDLE METER	• HEAVY DUTY SUSPENSION	• TIRE PRESSURE MONITOR SYS
LOW/HIGH INCLUDES FRONT	• HTD SANITIZATION SOLUTION	• HEAVY-DUTY 80-AMP BATTERY	
HOUSING (W/ LED WIG-WAG)	• PWR DR SEAT/6-WAY/M LUMBAR	• INTERIOR TRUNK/LIFTGATE	
• KEY LOCKS (DR/PASS/LFTGT)	• RED/WHITE TASK LIGHTING	RELEASE	
• PRIVACY GLASS 2ND/3RD ROW	• SEATBACK INTRUSION PLATES	• POLICE BRAKES: 4 WHL DISC	
	• TILT/TELESCOPING STEERING	W/ ABS & TRACTION CONTROL	
	WHL W/ 4 CONFIGURABLE	• POWER STEERING W/EPAS	
	LATCHING SWITCHES	• REAR VIEW CAMERA	
		• TRANSMISSION OIL COOLER	
			WARRANTY
			• 3 YR/36K MILE BUMPER-TO-
			BUMPER WARRANTY
			• 5 YR/100K MILE POWERTRAIN
			CARE EXTENDED SERVICE PLAN
			(ZERO DEDUCTIBLE)

INCLUDED ON THIS VEHICLE	(MSRP)	PRICE INFORMATION	(MSRP)
EQUIPMENT GROUP 500A		BASE PRICE	\$47,165.00
OPTIONAL EQUIPMENT/OTHER		TOTAL OPTIONS/OTHER	- 450.00
.AM/FM STEREO			
3.3L TI-VCT V6 FFV ENGINE	- 2,830.00		
10-SPEED AUTO TRANSMISSION	NO CHARGE	TOTAL VEHICLE & OPTIONS/OTHER	46,715.00
AUX CLIMATE CONTROL	610.00	DESTINATION & DELIVERY	1,595.00
GLOBAL LOCK/UNLOCK	NO CHARGE		
50 STATE EMISSIONS	NO CHARGE		
COURTESY LAMP DISABLE	25.00		
POLICE ENGINE IDLE FEATURE	260.00		
DRIVER SIDE LED SPOT LAMP	395.00		
BLIS (BLIND SPOT INFO SYSTEM)	545.00		
KEYLESS ENTRY - 4 FOBS	340.00		
4G LTE WI-FI HOTSPOT CREDIT	- 20.00		
STNLS STL HUB WHL CVR CREDIT	- 50.00		
REVERSE SENSING SYSTEM	275.00		
FLEX-FUEL CAPABILITY			
FRONT LICENSE PLATE BRACKET	NO CHARGE		

	RAMP ONE		TOTAL MSRP \$48,310.00
	CZ08	CONVOY	
	RAMP TWO	ITEM #: 56-R524 O/T 5B	Whether you decide to lease or finance your vehicle, you'll find the choices that are right for you. See your dealer for details or visit www.ford.com/finance .
	This label is affixed pursuant to the Federal Automobile Information Disclosure Act. Gasoline, License, and Title Fees, State and Local taxes are not included. Dealer installed options or accessories are not included unless listed above.		SPECIAL ORDER RA251 N RB 2X 415 007089 01 25 24

EPA DOT

Fuel Economy and Environment

Fuel Economy

19 MPG

combined city/hwy

17 city

23 highway

5.3 gallons per 100 miles

Standard SUVs range from 13 to 102 MPG. The best vehicle rates 140 MPGe. Values are based on gasoline and do not reflect performance and ratings based on E85.

You spend

\$4,500

more in fuel costs over 5 years

compared to the average new vehicle.

Driving Range

Gasoline: 414 miles

Ethanol (E85): 305 miles

Annual fuel cost

\$2,850

Fuel Economy & Greenhouse Gas Rating (tailpipe only)

Smog Rating (tailpipe only)

4

1 10

Best

1 10

Best

This vehicle emits 462 grams CO2 per mile. The best emits 0 grams per mile (tailpipe only). Producing and distributing fuel also create emissions; learn more at fuelconomy.gov.

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 28 MPG and costs \$9,750 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$3.60 per gallon. This is a dual fueled automobile. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

Calculate personalized estimates and compare vehicles

Smartphone QR Code

GOVERNMENT 5-STAR SAFETY RATINGS

Overall Vehicle Score ★★★★★

Based on the combined ratings of frontal, side and rollover. Should ONLY be compared to other vehicles of similar size and weight.

Frontal Crash

Driver Passenger

★★★★★

Based on the risk of injury in a frontal impact. Should ONLY be compared to other vehicles of similar size and weight.

Side Crash

Front seat Rear seat

★★★★★

Based on the risk of injury in a side impact.

Rollover

★★★★

Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★), with 5 being the highest. Source: National Highway Traffic Safety Administration (NHTSA). www.safercar.gov or 1-888-327-4236

1FM5K8AB7RGA27632



WARNING:

Operating, servicing and maintaining a passenger vehicle, pickup truck, van, or off-road vehicle can expose you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, do not idle the engine except as necessary, service your vehicle in a well-ventilated area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to www.P65Warnings.ca.gov/passenger-vehicle.



The modem is active and sending vehicle data (e.g., diagnostics) to Ford. See in-vehicle settings for connectivity options.

FordPass® Connect (optional on select vehicles), the FordPass App and complimentary Connected Service are required for remote features (See FordPass Terms for details). Connected service and features depend on compatible network availability. Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features. Connected service excludes Wi-Fi hotspot. See your local Ford website for our privacy policy.

 FORD PROTECT®

Insist on Ford Protect! The only extended service plan fully backed by Ford and honored at every Ford dealership in the U.S., Canada and Mexico. See your Ford dealer or visit www.FordOwner.com.

SCAN OR TEXT 1FRGA27632 TO 48028

Msg & Data rates may apply. Text HELP for help



www.ford.com/help/privacy-terms/



160 North Broadway
Fresno, CA 93701-1592

Estimate

Customer No.: PORTERVILLE

Quote No.: 15849

Phone: (559) 233-8818

(559) 268-8506

Quote To: **City of Porterville**

291 N Main St
Accounts Payable
Porterville, CA 93257-0000

Ship To: **City of Porterville**

291 N Main St
Porterville, CA 93257

Phone: (559) 782-7566

Fax: (559) 782-4050

Phone:

Email: [Irene Anaya <ianaya@ci.porterville>](mailto:Irene.Anaya@ci.porterville)

Date	Ship Via	F.O.B.	Terms	
10/30/24	Up-Flt Shop	Origin	Net 30	
Purchase Order Number	Sales Person			Expiration Date
	David Burchfield			11/29/24
Quantity Required	Item Number	Description	Unit Price	Amount

2024 FORD FPI U
PATROL BUILD
UNIT# TBD

LIGHTBARS/LIGHTS/SIREN

INNER EDGE PROMO PKG

1	BSFW50Z	Whelen Inner Edge DUO WeCanX FST	0.00	0.00
1	BSSP2ZJW	Whelen Inner Edge Duo FST Light Pkg 5/5 Promo Pkg 10 light, 5 Red/White Driver, 5 Blue/White Passenger, DUO	1240.00	1240.00
1	BS508	Whelen RST WCX 8 Light W/S/D Utility	0.00	0.00
1	BSSP2ZJA	Whelen Inner Edge Duo RST Light Pkg 5/5 Promo Pkg 10 light, 5 Red/ Amber Driver, 5 Blue/Amber Passenger, DUO	1240.00	1240.00
1	CCTL7	Whelen WeCAN 21 Button w/Slide Controller	0.00	0.00
1	C399	Whelen CENCOM CORE WCX Control CenterAmp Module	1018.00	1018.00
1	C399K4	Whelen OBDII Canport Cable Kit for Ford 2020 FPI U	0.00	0.00
1	SA315P	Siren Speaker	0.00	0.00
1	SAK67D	Whelen Siren Speaker Bracket fits '20 FPI Utility Drivers Side	0.00	0.00
1	CHWLFE29	Whelen WCX Howler System Single Speaker fits '20 FPI Utility	575.00	575.00

Thank You



160 North Broadway
Fresno, CA 93701-1592

Estimate

Customer No.: PORTERVILLE

Quote No.: 15849

Phone: (559) 233-8818

(559) 268-8506

Quote To: **City of Porterville**

291 N Main St
Accounts Payable
Porterville, CA 93257-0000

Ship To: **City of Porterville**

291 N Main St
Porterville, CA 93257

Phone: (559) 782-7566

Fax: (559) 782-4050

Phone:

Email: [Irene Anaya <ianaya@ci.porterville>](mailto:Irene.Anaya@ci.porterville)

Date	Ship Via	F.O.B.	Terms	
10/30/24	Up-Flt Shop	Origin	Net 30	
Purchase Order Number		Sales Person		Expiration Date
		David Burchfield		11/29/24
Quantity Required	Item Number	Description	Unit Price	Amount
2	VTX9J	Whelen Vertex Super LED (Red/Blue)	107.00	214.00
2	VTXFB	Vertex LED Surface Mount - Black	10.00	20.00
1	FHL-TAIL	Rear Flasher- Alternating	94.00	94.00
		CONSOLE EQUIPMENT		
1	C-VS-1210-INUT	Havis Mid-Height Angled Console for 2020 Ford FPI Utility	410.00	410.00
1	C-EB25-XTL-1P	Havis 2.5" Faceplate fits XTL2500/5000-05/APX7500	0.00	0.00
1	C-EB40-CCS-1P	Havis Faceplate 1 Piece fits Whelen CenCom Controller	0.00	0.00
1	C-FP-05	.5" Blank Havis Face Plate	0.00	0.00
5	C-FP-2	2" Blank Havis Face Plate	0.00	0.00
1	C-FP-1	1" Blank Havis Face Plate	0.00	0.00
1	C-CUP2-I	Havis Dual Cup Holder	37.00	37.00
1	C-ARM-108	Havis Swing Away Flip Up Arm Rest	173.00	173.00
1	AC-MCM1	Troy Mic Clip	15.00	15.00
1	MMSU-1	Magnetic Mic Conversion Kit	42.00	42.00
1	C-ML-MLB-LED	Havis Gooseneck LED Maplight	45.00	45.00
1	DC5E8Q-25MB	Cat5 Patch Cable 25'	19.00	19.00
		CUSTOMER PROVIDED DOCKING STATION FOR DELL 7212./7220 TABLET		
1	LPS-138	Havis Power Supply for Docking Station	222.00	222.00

Thank You



160 North Broadway
Fresno, CA 93701-1592

Estimate

Customer No.: PORTERVILLE

Quote No.: 15849

Phone: (559) 233-8818

(559) 268-8506

Quote To: **City of Porterville**

291 N Main St
Accounts Payable
Porterville, CA 93257-0000

Ship To: **City of Porterville**

291 N Main St
Porterville, CA 93257

Phone: (559) 782-7566

Fax: (559) 782-4050

Phone:

Email: [Irene Anaya <ianaya@ci.porterville>](mailto:Irene.Anaya@ci.porterville)

Date	Ship Via	F.O.B.	Terms	
10/30/24	Up-Flt Shop	Origin	Net 30	
Purchase Order Number		Sales Person		Expiration Date
		David Burchfield		11/29/24
Quantity Required	Item Number	Description	Unit Price	Amount
1	C-DMM-3015	Havis Dash Monitor Mount fits '20 FPI Utility	429.00	429.00
1	C-MD-112	Havis 11" Slide Out Locking Sling Arm 11" Slide Out Locking Swing Arm with Motion Adapter	279.00	279.00
1	PKG-KB-2001	Havis Rugged Keyboard w/Mount	565.00	565.00
		MISC HARDWARE		
1	BK0534ITU20	Setina PB400 VS Bumper fits '20 FPI Utility	475.00	475.00
1	PK1134ITU20	Setina #8XL Partition 1/2 Poly - 1/2 coated metal Stationary Window	832.00	832.00
1	GK10271U	Setina Single T Rail Weapon Mount 1 XL Lock Old p/n GK10271UXLSSCA	319.00	319.00
1	WK0514ITU20	Setina Window Barrier Steel Vertical	280.00	280.00
1	DK0100ITU20	Setina TPO Black Plastic Door Panels	280.00	280.00
1	QK0566ITU20	Setina #12 Rear Partition Coated Poly w/replacement Seat & CP Seat Belts	1402.00	1402.00
1	CP-UV20-CARGO	Troy Utility Cargo Mount w/Gas Shocks fits '20 FPI Utiltiy	760.00	760.00
		MISC ITEMS/ELECTRICAL		
1	LP450NMO	450mhz Dome Antenna	64.00	64.00
1	NMO58U-NC	NMO Coax Kit w/ 17' of RG58	19.00	19.00

Thank You



160 North Broadway
Fresno, CA 93701-1592

Estimate

Customer No.: PORTERVILLE

Quote No.: 15849

Phone: (559) 233-8818

(559) 268-8506

Quote To: **City of Porterville**

291 N Main St
Accounts Payable
Porterville, CA 93257-0000

Ship To: **City of Porterville**

291 N Main St
Porterville, CA 93257

Phone: (559) 782-7566

Fax: (559) 782-4050

Phone:

Email: [Irene Anaya <ianaya@ci.porterville>](mailto:Irene.Anaya@ci.porterville)

Date	Ship Via	F.O.B.	Terms
10/30/24	Up-Flt Shop	Origin	Net 30

Purchase Order Number	Sales Person	Expiration Date
	David Burchfield	11/29/24

Quantity Required	Item Number	Description	Unit Price	Amount
1	RFU6001	Mini UHF Connector RG58	5.00	5.00
1	7615B-BSS	Blue Seas Solenoid/Timer. 120amp 12vdc	123.00	123.00
1	5029B-BSS	12 Circuit Water Resistant Fuse Block w/Cover	42.00	42.00
1	5029 FPI MNT BRKT	Mounting Bracket for 5029 Fuse Block. Fits '13 FPI Utility	50.00	50.00
1	7187B-BSS	Bussman 100amp Resettable Circuit Breaker	47.00	47.00
3	5080	Relay	14.00	42.00
1	RQA5000C	QMA Male Connector fits RG58	15.00	15.00
1	MATERIALSFEE3	Installation Material Bundle	300.00	300.00
33.000	LAISREG	Shop Installation Complete Admin Build 2024 FORD FPI U Install Customer Provided Motorola Radio S/N# Cradlepoint Axon Camera System	160.00	5280.00

Subtotal	16972.00
Freight charges	500.00
Sales tax @ 7.75000%	906.13
Total	18378.13

We appreciate your continued patronage

Thank You

Billing Address:
PORTERVILLE, CITY OF
291 N MAIN ST
PORTERVILLE, CA 93257
US

Shipping Address:
PORTERVILLE, CITY OF
291 N MAIN ST
PORTERVILLE, CA 93257
US

Quote Date:11/01/2024
Expiration Date:01/30/2025
Quote Created By:
Ronald Taylor
Ronald.Taylor1@
motorolasolutions.com

End Customer:
PORTERVILLE, CITY OF
Mark Azevedo
mazevedo@ci.porterville.ca.us
559.782.7424

Contract: 17724 - HGAC (TX)-RA05-21
Payment Terms:30 NET

Line #	Item Number	Description	Qty	List Price	Disc %	Sale Price	Ext. Sale Price
	APX™ 6500 / Enh Series	ENHANCEDAPX6500					
1	M25QSS9PW1BN	APX6500 ENHANCED UHF R1 MOBILE	1	\$3,383.12	27.0%	\$2,469.68	\$2,469.68
1a	G48BD	ENH: CONVENTIONAL OPERATION APX6500	1	\$550.00	27.0%	\$401.50	\$401.50
1b	G67DT	ADD: REMOTE MOUNT E5 APXM	1	\$327.00	27.0%	\$238.71	\$238.71
1c	G78AT	ENH: 3 YEAR ESSENTIAL SVC	1	\$288.00	0.0%	\$288.00	\$288.00
1d	GA01606AA	ADD: NO BLUETOOTH/ WIFI/GPS ANTENNA NEEDED	1	\$0.00	0.0%	\$0.00	\$0.00
1e	B18CR	ADD: AUXILIARY SPKR 7.5 WATT APX	1	\$66.00	27.0%	\$48.18	\$48.18
1f	G843AH	ADD: AES ENCRYPTION AND ADP	1	\$523.00	27.0%	\$381.79	\$381.79
1g	G426AD	ADD: ANT 1/4 WAVE WHIP 450-470 MHZ	1	\$28.00	27.0%	\$20.44	\$20.44
1h	G444AH	ADD: APX CONTROL HEAD SOFTWARE	1	\$0.00	0.0%	\$0.00	\$0.00
1i	G806BL	ENH: ASTRO DIGITAL CAI OP APX	1	\$567.00	27.0%	\$413.91	\$413.91



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.
Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 ~ #: 36-1115800

Line #	Item Number	Description	Qty	List Price	Disc %	Sale Price	Ext. Sale Price
1j	GA01670AA	ADD: APX E5 CONTROL HEAD	1	\$717.00	27.0%	\$523.41	\$523.41
1k	W22BA	ADD: STD PALM MICROPHONE APX	1	\$79.00	27.0%	\$57.67	\$57.67
1l	QA09113AB	ADD: BASELINE RELEASE SW	1	\$0.00	0.0%	\$0.00	\$0.00
1m	W969BG	ENH: MULTIKEY OPERATION	1	\$363.00	27.0%	\$264.99	\$264.99
Subtotal							\$5,108.28
Estimated Tax							\$445.88
Grand Total						\$5,554.16(USD)	

Notes:





Purchase Order Checklist

Marked as PO/ Contract/ Notice to Proceed on Company Letterhead
(PO will not be processed without this)

PO Number/ Contract Number

PO Date

Vendor = Motorola Solutions, Inc.

Payment (Billing) Terms/ State Contract Number

Bill-To Name on PO must be equal to the *Legal* Bill-To Name

Bill-To Address

Ship-To Address (If we are shipping to a MR location, it must be documented on PO)

Ultimate Address (If the Ship-To address is the MR location then the Ultimate Destination address must be documented on PO)

PO Amount must be equal to or greater than Order Total

Non-Editable Format (Word/ Excel templates cannot be accepted)

Bill To Contact Name & Phone # and EMAIL for customer accounts payable dept

Ship To Contact Name & Phone #

Tax Exemption Status

Signatures (As required)



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to Amend Approved Purchase of Routeware Waste Collection Equipment In-Cab Technology and Billing Systems

SOURCE: Public Works

COMMENT: On September 17, 2024, the City Council approved a staff report authorizing the purchase of in-cab technology and billing systems for the Refuse Division to improve operational efficiency, enhance customer service, ensure accurate billing, and increase operator safety. However, following a detailed review of the costs associated with this project, it was determined that the original report underestimated the total project costs. The purpose of this staff report is to amend and update the total costs of the project to reflect the accurate amounts as outlined in the attached Routeware and Recyclist quotes.

The City of Porterville's Refuse Division provides curbside and commercial garbage, organics, and recycling collection services to approximately 16,200 service addresses. The in-cab technology system integrates hardware, software, and professional services to support refuse collection operations. The system will enable staff to improve customer service by decreasing missed stops, balancing routes for better efficiency, and ensuring compliance with the State-mandated SB 1383.

This system includes:

Hardware (tablets, cameras, and power kits)

Software applications for real-time data tracking

Billing systems

Professional services for installation, training, and support

The Routeware hardware, professional services, and monthly subscriptions will be purchased through the Houston-Galveston Area Council (HGACBuy) cooperative purchasing program. HGACBuy is a government procurement service that helps streamline purchasing by offering competitively awarded contracts to local governments and other public entities across the nation.

The Recyclist and ReCollect portions of the project, which includes program tracking and data services, will be purchased through the Sourcewell cooperative purchasing program. Sourcewell is a

Item No. 4.

government agency that provides cooperative purchasing solutions to help local governments obtain competitive bids and secure cost savings.

Based on the attached Routeware and Recyclist quotes, the total one-time cost for hardware and professional services, including a 10% contingency, amounts to \$150,871.60, with annual recurring costs for subscriptions and maintenance services totaling \$226,899.84 per year.

Key Cost Breakdown:

One-Time Costs:

Total hardware, implementation, and installation fees: \$137,156

10% contingency: \$13,715.60

Total One-Time Cost: \$150,871.60

Annual Recurring Costs:

Monthly subscription fees (e.g., cellular data, video system, EasyRoute, ReCollect, Recyclist, and user subscriptions) total \$18,908.32 per month and \$226,899.84 annually.

Total Project Cost for the First Year:

Combining one-time costs and the first year of recurring fees, the total project cost for the first year is \$377,771.44.

Total Anticipated Cost Over Three Years:

The total anticipated cost of the project over the three-year period, including the one-time expenses and three years of recurring subscription fees, is calculated as follows:

One-Time Cost: \$150,871.60 (includes contingency)

Recurring Costs (Year 1): \$226,899.84

Recurring Costs (Year 2): \$226,899.84

Recurring Costs (Year 3): \$226,899.84

Total Anticipated Cost for Three Years: \$831,571.12

The contract for this system is planned for an initial three-year term, with automatic renewal for successive one-year terms. The City may opt-out with 30 days written notice prior to the auto-renewal date. Funding for this project's one-time purchase is available through the Refuse Division's Equipment Replacement Fund and recurring subscription fees will be funded by the Refuse Division's Operating Budget.

RECOMMENDATION: It is recommended that the City Council:

1. Approve the updated and corrected annual project cost of in-cab technology and billing systems for the Refuse Division at an initial one-time cost of

\$150,871.60 (including a 10% contingency), and a recurring annual subscription fee of \$226,899.84;

2. Approve the purchase of the Routeware portion of the project (hardware, professional services, and monthly subscriptions) through the Houston-Galveston Area Council (HGACBuy) cooperative purchasing program, with a total purchase order amount of \$320,951.60 for the first year (one-time cost of \$139,871.60 plus an annual recurring cost of \$181,080.00);

3. Approve the purchase of the Recyclist and ReCollect portions of the project (customer engagement, program tracker and data services) through the Sourcewell cooperative purchasing program, with a total purchase order amount of \$56,819.84 for the first year (one-time cost of \$11,000.00 plus an annual recurring cost of \$45,819.84);

4. Authorize the Public Works Director to enter into a contract for a three-year term with an automatic renewal clause for successive one-year terms, with the option for the City to opt out by providing written notice 30 days prior to renewal;

5. Approve the procurement of the in-cab technology system through the HGACBuy and Sourcewell cooperative purchasing programs, as authorized by California Government Code § 6502 and City of Porterville Resolution No. 35-93; and

6. Authorize the Finance Director to make any necessary budget amendments or transfers to effectuate this purchase.

ATTACHMENTS:

1. Previous Routeware Staff Report - 091724
2. Reso 35-93_4-20-93 (1)
3. Routeware Quote
4. Routeware-Recyclist Quote

Appropriated/Funded:

Review By:

Department Director:
Michael Knight, Assistant City Manager

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – SEPTEMBER 17, 2024

SUBJECT: Authorization to Purchase Routeware Waste Collection Equipment In-Cab Technology and Billing Systems

SOURCE: Public Works

COMMENT: The City of Porterville's Refuse Division provides curbside and commercial garbage, organics, and recycling collection services to approximately 16,200 service addresses within the incorporated areas of the City. To improve operational efficiency, enhance customer service, ensure accurate billing, and increase operator safety, the Public Works Department has identified the need for an in-cab technology system.

This system will integrate hardware, software, and professional services to support refuse collection operations. The technology will enable staff to improve customer service by decreasing the number of go-backs and missed stops, continuing compliance with the State-mandated SB 1383, and balancing routes for better efficiency. Given the large scale of refuse collection services in Porterville, the implementation of in-cab technology is critical to modernizing operations and addressing growing service demands.

The proposed in-cab technology system will include the installation of hardware in vehicles, software applications for real-time data tracking, billing and professional services for installation, training, and ongoing support. This system will also be integrated with the City's existing systems to ensure a seamless transition and continued operations.

The contract for this system is planned for an initial three-year term, with an automatic renewal policy for successive one-year terms. Should the City wish to opt-out, a written notice must be provided 30 days before the auto-renewal date.

Funding for this project is available through the Refuse Division's Equipment Replacement Fund. The initial cost for the in-cab technology system is \$192,514.32, with a 10% contingency to cover any unforeseen costs associated with installation or system integration. The system also requires a monthly subscription fee of \$15,090.00, covering ongoing support, data services, and software updates.

City Departments are authorized to purchase goods and services through cooperative purchasing programs, pursuant to California Government Code § 6502 and the City of Porterville Resolution No. 35-93, which was adopted by the City Council on April 20, 1993. This authorization allows the City to

Item No. 2.

participate in cooperative purchasing programs with other agencies for the procurement of materials, equipment, and services, resulting in cost savings and faster procurement timelines. Staff is recommending to purchase Routeware, Inc. software, hardware and professional services through the Sourcewell awarded contract, contract number 041521-RCS. Sourcewell is a governmental agency offering cooperative purchase contracts for use by local governments. All Sourcewell contracts have been competitively solicited, reviewed and evaluated by a committee and recommended to the Sourcewell Board of Directors for award.

RECOMMENDATION: That the City Council:

1. Approve the purchase of in-cab technology and billing system for the Refuse Division at an initial cost of \$192,514.32, including a 10% contingency, and a monthly subscription fee of \$15,090.00;
2. Authorize the City Manager to enter into a contract for a three-year term with an automatic renewal clause for successive one-year terms, with the option for the City to opt out by providing written notice 30 days prior to renewal;
3. Approve the procurement of the in-cab technology system through a cooperative purchasing program, as authorized by California Government Code § 6502 and City of Porterville Resolution No. 35-93; and
4. Authorize the Finance Director to make any necessary budget amendments or transfers to effectuate this purchase.

ATTACHMENTS:

1. Quote
2. Reso 35-93_4-20-93
3. Routeware-Recyclist Order Form

Appropriated/Funded:

Review By:

Department Director:
Michael Knight, Assistant City Manager

Final Approver: Patrice Hildreth, City Manager

RESOLUTION NO. 35-93

A RESOLUTION OF THE CITY OF PORTERVILLE
AUTHORIZING PARTICIPATION IN COOPERATIVE
PURCHASING PROGRAMS WITH OTHER LOCAL AGENCIES
FOR THE PROCUREMENT OF MATERIALS, EQUIPMENT AND SERVICES

BE IT RESOLVED By the City Council of the City of Porterville that authorization be given to participate in cooperative purchasing programs with other agencies for materials, equipment and services.

BE IT FURTHER RESOLVED that authorization be given to the City Purchasing Agent to sign said contracts on behalf of the City.

/s/ Daryl C. Nicholson
Daryl C. Nicholson

ATTEST:

C.G. Huffaker, City Clerk

STATE OF CALIFORNIA)
)
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 at a regular meeting of the Porterville City council regularly called and held on the 20th day of April 1993.

THAT Said resolution was duly passed and adopted by the following vote:

AYES: Clark, Gibbons, Leavitt, Gifford, Nicholson
NOES: None
ABSENT: None

C.G. HUFFAKER, City Clerk

By: Georgia Hawley



Order Form

Routeware, Inc.

16525 SW 72nd Ave
Portland, Oregon 97224
United States

Phone: (503) 906-8500
Email: info@routeware.com

Order #: Q-06838-1
Agreement Term: 36 Months
Offer Good Through: 10/10/2024

Ship To

Briana Spry
City of Porterville - CA
291 N Main St
Porterville, California 93257
United States
(559) 782-7586
bspry@ci.porterville.ca.us

Bill To

City of Porterville - CA
291 N Main St
Porterville, California 93257
United States

SALESPERSON	PHONE	EMAIL	PAYMENT TERMS
Kevin Hahn	(650) 430-6012	khahn@routeware.com	Net 10

Statement of Confidentiality & Non-Disclosure

This document contains proprietary and confidential information. All information and data submitted to City of Porterville - CA is provided in reliance upon its consent not to use or disclose any information contained herein except in the context of its business dealings with Routeware, Inc. The recipient of this document agrees to inform present and future employees of City of Porterville - CA who view or have access to its content of its confidential nature. The recipient agrees to instruct each employee that they must not disclose any information concerning this document to others except to the extent that such information is generally known to, and is available for use by, the public. The recipient also agrees not to duplicate or distribute or permit others to duplicate or distribute any material contained herein without Routeware, Inc.'s express written consent.

Routeware, Inc. retains all title, ownership and intellectual property rights to the material and trademarks contained herein, including all supporting documentation, files, marketing materials, and multi-media.

BY ACCEPTANCE OF THIS DOCUMENT THE RECIPIENT AGREES TO BE BOUND BY THE AFOREMENTIONED STATEMENT

Hardware

PRODUCT	UNIT	QTY	UNIT PRICE	EXTENDED
Heavy Duty Tablet 10" Android TA4PRO with Full Install Kit - Price included in monthly service fee	Each	36	USD 0.00	USD 0.00
Actuator Kit for HD Android and Windows	Each	19	USD 144.00	USD 2,736.00
Camera Controller (Camera Not Included)	Each	29	USD 499.00	USD 14,471.00
Standard HD Camera for Camera Controller with Cable	Each	116	USD 95.00	USD 11,020.00
Monitor for Camera Controller	Each	2	USD 42.00	USD 84.00
Camera Power Kit	Each	29	USD 40.00	USD 1,160.00
Video Service Hardware	Each	29	USD 205.00	USD 5,945.00
			Hardware Total:	USD 35,416.00

Services

PRODUCT	UNIT	QTY	UNIT PRICE	EXTENDED
Vehicle Installation	Each	36	USD 380.00	USD 13,680.00
Actuator Signal Installation	Each	19	USD 190.00	USD 3,610.00
Camera System Installation	Each	24	USD 380.00	USD 9,120.00
Additional Camera Installation	Each	92	USD 190.00	USD 17,480.00
Routeware Professional Services	Per Hour	160	USD 225.00	USD 36,000.00
EasyRoute Training	Each	1	USD 5,000.00	USD 5,000.00
EasyRoute Support Service Pack (30 Hours)	Each	1	USD 6,750.00	USD 6,750.00
			Services Total:	USD 91,640.00

Recurring Subscriptions

PRODUCT	UNIT	QTY	UNIT PRICE	EXTENDED
Cellular Data Charge (RD)	Per Month	36	USD 15.00	USD 540.00
Auto Pickup System Fee	Per Month	19	USD 20.00	USD 380.00
Picture Service Fee	Per Month	29	USD 45.00	USD 1,305.00
Premium Video System Fee	Per Month	29	USD 61.00	USD 1,769.00
eMobile Plus	Per Month	36	USD 189.00	USD 6,804.00
Interface Support	Per Month	1	USD 237.50	USD 237.50
EasyRoute Subscription	Per Month	1	USD 2,524.50	USD 2,524.50

PRODUCT	UNIT	QTY	UNIT PRICE	EXTENDED
Additional User Subscription	Per Month	10	USD 153.00	USD 1,530.00
Recurring Subscriptions Total:				USD 15,090.00

Payment Terms -

Hardware is invoiced seven (7) days after execution of the Order.

Software Fees are invoiced thirty (30) days after the Contract Start Date Order (the "Effective Service Date").

Recurring Subscriptions shall be invoiced quarterly in advance, commencing on the Effective Service Date and on each successive anniversary thereof.

For all other services, Company will submit invoices for services to the Customer by the 10th of the month following the month in which Company provided services and Company's invoice will have a date, an invoice number, a purchase order number and a description of the goods or services.

Additional Terms:

If Data usage is greater than 1GB per vehicle per month, Routeware may limit network speeds or limit the actual downloading of video files.

Terms & Conditions Information

This Order and all products and services herein are subject to and limited to the terms and conditions located at <https://www.routeware.com/Clients>. Any purchase orders issued in response to this Order, will be deemed acceptance of such terms.

<http://www.routeware.com/Clients>

Password: RWClient1!

Prices are exclusive of any federal, state, or local taxes. The customer is responsible for all federal, state, and local taxes.

This system requires a specific server to operate Routeware software, which may need to be purchased separately.

This system requires cellular connectivity for each vehicle which may need to be purchased separately.

If route sequencing by Routeware is a requirement, additional professional services fees may apply.

On-Board Computer software is sold as a perpetual license, allowing the license to be activated on replacement hardware.

Any lapse in support voids perpetual license.

Pricing does not include freight cost or travel expenses, which will be invoiced as they are incurred.

Professional Services Project Terms:

The hours included in this order and the accompanying Statement of Work represent our best estimate of hours required for the Project, based on our experience. You understand and agree that actual fees may differ. All fee and timeline estimates are based on the information provided to us to-date, including your system requirements and resource allocations. It does not account for presently unknown circumstances that create uncertainty. These include, for example, your level of participation, complexity of your processes and requirements, unknown system and data elements, changes in scope of work, changes in assumptions, delays caused by you or third parties, or other conditions outside of our reasonable control. We will notify you if we expect to exceed cost or timeline estimates, and this will be addressed through the change order process described below.

We will work with your Project Manager to help manage the scope of the Services within the estimate provided. However, both parties acknowledge and agree that actual fees may differ from this estimate. If we determine there has been a change in or unsuccessful completion of responsibilities or assumptions set forth in this Proposal, a change order may be required. In addition, any Project changes, including to address unknown circumstances, additional work requested by you or changed requirements, will require a Change Order. Change Orders may also impact the Project timeline. You understand that, in all instances, Routeware's compensation will be based upon the work actually performed and expenses actually incurred.

Subscription Hardware Additional Terms -

All Hardware on this Order sold as a subscription is the property of Routeware. Throughout the term of this Order and at no additional cost to the Customer, Routeware will repair or replace defective Subscription Hardware purchased on this Order with a comparable unit, provided that, in Routeware's sole determination, the unit has not been damaged beyond normal wear and tear. Normal wear and tear includes battery/component failure, scratches and superficial damage to the top, bottom, and corners of the unit. That not covered under the replacement program includes, but is not limited to, damage from (a) drops, (b) immersion in water, (c) cracked screens

caused by excess pressure or hard devices, or (d) deliberate damage to the unit. Unit replacement costs resulting from damage not covered by the warranty is the responsibility of Customer. Customer shall surrender to Routeware any computers that are replaced under this program. Notwithstanding any other agreements or clauses on this matter in this agreement or others, Routeware reserves the right to increase monthly service if, in Routeware's sole determination, units are routinely abused or mishandled to the point of failure. Refer to Section 7.2 of the Routeware Master Sales and License Agreement for additional warranty details. At the conclusion of the License Period, Customer shall return all Subscription Hardware to Routeware in good condition and working order. In the event the Customer does not return all Subscription Hardware, or the Subscription Hardware is damaged, lost, or stolen while in the Customer's possession, the Subscription Hardware will be deemed sold to Customer, and Customer agrees to pay the then-current list price (plus any applicable taxes) upon receipt of an invoice.

City of Porterville - CA

Signature: _____

Date: _____

Name (Print): _____

Title: _____

Routeware, Inc., and affiliates

Signature: _____

Date: _____

Name (Print): _____

Title: _____

Please sign and email to Kevin Hahn at khahn@routeware.com

FOR INTERNAL USE ONLY
Reviewed By:



16525 SW 72nd Ave.
Portland, OR 97224
www.Routeware Inc..com

(503) 906-8500 | Corporate Offices
(877) 906-8550 | Toll Free
(503) 906-8544 | Fax

STATEMENT OF WORK

Purpose

This statement of work ("SOW") and any addenda attached hereto, sets forth the deliverables associated with the Routeware Inc. implementation of licensed software/subscription services (hereafter "Product" or "Services") as determined by the applicable Master Sales and License Agreement and Professional Services Agreement, hereafter "Agreement", executed by the city of Porterville CA ("Licensee" or "Customer" or "Subscriber") and Routeware Inc. ("Licensor" or "Provider").

This SOW and attached Addenda set forth the scope and objectives, project stages, project governance and objectives, gate checks and lifecycle stages, and change management, applicable to the implementation of the Product or Services as further identified within the Routeware Inc. line of business below:

☒ EnCore (CORE)

☒ EasyRoute (ER)

Routeware Inc.'s Gate Checks

Routeware Inc. will develop a project plan to manage the implementation lifecycle and to report on progress. Any requests for deviations to the project plan will be documented, reviewed, and approved by the respective project managers for the Customer and Routeware Inc. In addition, a summary of requested changes will also be reviewed during the scheduled gate check reviews. Changes must be mutually approved by both parties.

As part of its standard and proven project execution, Routeware Inc. will structure the project into several phases designed to ensure success. Routeware Inc. will work collaboratively with the Customer to develop a plan that details requirements, assigns responsibilities, and sets due dates – to best achieve the goal of meeting the designated go-live date with a minimum of business disruption. From the onset of the project, Routeware Inc. will assign a core implementation team.

Routeware Inc. will execute gate check reviews at the completion of the Discover, Design, and Deploy stages of the project lifecycle. The gate check reviews provide the following:

Stage 1 - Discover

The Discover stage includes the comprehensive planning and resource scheduling for the duration of the project, including a review of the approach and governance, the cadence for status reporting, and clarification of roles and responsibilities for Routeware Inc. and Customer project team members. It also includes the requirements confirmation interview, documentation, and approval, along with the initial solution configuration based on Routeware Inc.'s best practices for a specific Customer's needs, and the import of Customer data.

Stage 2 - Design

The "future state" is documented, reviewed, and approved by the Customer, including a validation of the data imported, upon which time the environment is provisioned, the solution installed, and the Customer provided access to the solution. There will be progressive "targeted" training and begin the solution familiarization process for key users, along with the creation of a validation plan to be used during the Deploy stage. The Routeware Inc. team performs an internal verification that the solution, as configured, is operating properly, and aligns with the approved requirements and future state configuration, reaching the milestone referred to as being "solution complete".

Stage 3 - Deploy

The Deploy stage includes scenario-based training, followed by the Customer's end-to-end validation of the solution across business scenarios/use cases identified and configured during the Discover and Design stages. Scenario-based training - typically conducted with Customer-identified "super users" - follows a tell, show, do model, where the individual delivering the training outlines the scenario, then demonstrates the scenario, and finally the super users complete an end-to-end example themselves using the "happy path", a clean, well-executed process without exceptions. Upon completion of the validation plan, the milestone of "solution acceptance" is confirmed by the Customer. At go-live there is final training and practice for end users and drivers, with a focus on what a user needs to do in the system to complete the duties of a particular role, including handling of typical "operational exceptions" encountered on a day-to-day basis. The final system cutover is performed and Routeware Inc. aids the Customer during the go live event and stabilization period, helping to triage, manage and resolve issues that may arise, followed by a transition to support, and project closeout.

Services

The scope of Services outlined below provides a breakdown of the key components and gate checks of the Routeware Inc. implementation and the corresponding deliverables provided by Routeware Inc. and the Customer.

	Routeware Inc. Deliverables	Customer Deliverables
Discover	Key activities include: • Project kick-off • Develop implementation plan/key milestones • Complete pre-implementation documents • Review, document, and approve business requirements: ○ Scenarios	Key activities include: • Define/assemble project team • Project planning • Define measures of project success Key deliverables include: • Process questionnaires

	○ Reporting ○ Integrations ○ Data workshop/Data import Key deliverables include: ● Draft project plan ● Session agendas ● Documented business requirements ● Environment provisioning/solution installation	● Provide documented process to model recommended configuration ● Provide sample data sets
Design	Key activities include: ● Define, configure, document and approve future state ● Conduct status meetings ● Update project plan ● Install solutions(s) ● Targeted training on data maintenance, transactions etc. ● Solution familiarization exercises ● Drafting solution validation plan ● Creation of scenario-based training plan ● Conduct status meetings Key deliverables include: ● Data import (3 imports into test environment) ● Solution configuration ○ Users ○ Customers ○ Equipment ○ Routes ○ Codes ○ Other applicable data ● Session agendas ● Targeted training ● Final solution configuration ● Design gate check ● Project plan revisions	Key activities include: ● Customer completes recommended Product training ● Attend all system configuration sessions ● Complete all action items after each system configuration session ● Required configuration and testing ● Internal process review ● Attend all design sessions ● Complete solution familiarization exercises ● Attend all status meetings ● Begin work on change management activities Key deliverables include: ● Approved business requirements ● Provide data for import ○ Accepted file formats include .csv or .xml ○ Updated data sets as required ● Approved future state configurations ● Enumeration of test plans ● Solution familiarization activities ● Data maintenance ● Transaction practice ● Solution validation ● Usage documentation and/or standard operating procedures (SOPs) ● Approval/sign-off
Deploy	Key activities include: ● Scenario-based super user training ● Solution validation (user acceptance testing, UAT) ● Creation of end-user training plan ● Solution acceptance milestone ● Conduct status meetings ● Update project plan	Key activities include: ● Solution validation activities ● End-user training plans ● Approval/sign-off ● Solution acceptance Key deliverables include: ● End-user training and practice

	• End-user training and practice • Go-live cutover • Issue management and stabilization • Transition to support • Project closeout Key deliverables include: • Scenario-based training • Readiness gate check • Project plan revisions • Go-live cutover and stabilization assistance • Issue management and resolution • Transition to support • Project closeout	• Issue triage and management
--	--	---

Assumptions

- All data to be imported will be provided in the Routeware Inc.-approved .csv, .sql or .xml format, and will not require transformation during the import process.
- The Customer will provide adequate resources and key decision makers required to meet tasks associated with implementation milestones.
- The Routeware Inc. project manager will be the primary contact throughout the project, will coordinate the efforts of implementation consultants and subject matter experts (SMEs) throughout the project, and will establish a cadence of status meetings with the Customer.
- The data import process will validate the integrity of the data, and exceptions provided back to the Customer for resolution prior to final import.

Out of Scope

- Interfaces – No interfaces to 3rd party applications are included in this estimate.
- Custom Reports – Reporting is robust across all Routeware Inc. solutions. If you require unique custom reports, those will be scoped separately with an estimate for your consideration.

SOW Change Order

Changes to a SOW will require a written change order signed by the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule for the performance of the applicable Services. Upon Routeware Inc.'s receipt of a change order request from the Customer, Routeware Inc. will promptly notify the Customer if Routeware Inc. believes that the change order request requires an adjustment to the fees or to the schedule for the performance of the applicable Services. In such an event, the parties will negotiate in good faith a reasonable and equitable adjustment to the fees and/or schedule, as applicable. During such negotiations, Routeware Inc. may continue to perform Services pursuant to the existing SOW and will have no obligation to perform Services pursuant to the change order request unless and until the parties have executed an applicable change order. Any time and materials that are required to evaluate a change order request are billable at Routeware Inc.'s then-current standard rates.

Pricing

An estimate for the Routeware Inc. Professional Services stated herein is set forth in the Order Form(s) # Q-06838 and is based on time and materials required as related to the Product or Service, Routeware Inc.'s current understanding of the Customer's business requirements, and the expected future state of the project or a fixed fee. Any new SOW or changes or requests for additional Services hereunder shall incur additional charges billed at Routeware Inc.'s then-current rates.

The estimated fees are provided for budgetary purposes only. Fees for Professional Services will be billed on either a time and materials or fixed fee basis, as specified below, and shall be payable to Routeware Inc. in consideration of the Professional Services provided under this SOW.

☒ **EnCore - Time and Materials**

☒ **EasyRoute – Fixed Fee**

Professional Services	Description	Hours	Rate	Total
Project Management	Project planning, resource coordination, status reporting, budget, risk and issue management	40	\$225	\$9,000.00
Implementation Consultant(s)	Requirements confirmation, solution configuration, documentation, training, go live assistance	60	\$225	\$13,500.00
Data Migration	Initial data import	60	\$225	\$13,500.00
EasyRoute Implementation Consultant	Requirements confirmation, solution configuration, documentation, virtual and on-site training, go live assistance	-----	-----	\$5,000.00
EasyRoute Service Pack	Each service pack includes 30-hours of Professional Services hours for ongoing system training and support	-----	-----	\$6,750.00
TOTALS				\$47,750.00

Fees shall be payable in accordance with the terms of the governing Agreement. Fees do not include charges for any taxes imposed by any government authority on the provision of Professional Services to you, and you shall pay any such taxes upon our invoice, including without limitation any sales or use tax a governmental authority may impose on the provision of Professional Services to you (but excluding any taxes based upon our net income).

In addition to paying the fees described above, you will reimburse us for reasonable travel, lodging and other expenses incurred in connection with Professional Services under this SOW, provided that such expenses shall not be reimbursable unless we have provided you with receipts or other documentation reasonably substantiating such expenses or costs as part of the reimbursement request. Final acceptance of this SOW will follow the formal quote which includes this document.

Confidentiality Statement

This SOW, including all attachments, copies, and derivatives thereof, is considered Routeware Inc. confidential information, and is subject to all obligations of confidentiality set forth in the Agreement.



Order Form

Routeware, Inc.

16525 SW 72nd Ave
Portland, Oregon 97224
United States

Phone: (503) 906-8500
Email: info@routeware.com

Order #: Q-07082-1
Agreement Term: 36 Months
Offer Good Through: 10/9/2024

Ship To

Briana Spry
City of Porterville, CA
291 N Main St
Porterville, California 93257
United States
(559) 782-7586
bspry@ci.porterville.ca.us

Bill To

City of Porterville, CA
291 N Main St
Porterville, California 93257
United States

SALESPERSON	PHONE	EMAIL	PAYMENT TERMS
Sean Ostlund	(503) 906-8530	sostlund@routeware.com	Net 10

Statement of Confidentiality & Non-Disclosure

This document contains proprietary and confidential information. All information and data submitted to City of Porterville, CA is provided in reliance upon its consent not to use or disclose any information contained herein except in the context of its business dealings with Routeware, Inc. The recipient of this document agrees to inform present and future employees of City of Porterville, CA who view or have access to its content of its confidential nature. The recipient agrees to instruct each employee that they must not disclose any information concerning this document to others except to the extent that such information is generally known to, and is available for use by, the public. The recipient also agrees not to duplicate or distribute or permit others to duplicate or distribute any material contained herein without Routeware, Inc.'s express written consent.

Routeware, Inc. retains all title, ownership and intellectual property rights to the material and trademarks contained herein, including all supporting documentation, files, marketing materials, and multi-media.

BY ACCEPTANCE OF THIS DOCUMENT THE RECIPIENT AGREES TO BE BOUND BY THE AFOREMENTIONED STATEMENT

Services

PRODUCT	UNIT	QTY	UNIT PRICE	EXTENDED
Program Tracker Implementation	Each	1	USD 5,000.00	USD 5,000.00
			Services Total:	USD 5,000.00

Recurring Subscriptions

PRODUCT	UNIT	QTY	UNIT PRICE	EXTENDED
Program Tracker	Per Month	1	USD 2,285.00	USD 2,285.00
RST Data Import - Prepaid	Per Month	4	USD 83.33	USD 333.32
			Recurring Subscriptions Total:	USD 2,618.32

Payment Terms -

Software Fees are invoiced thirty (30) days after the Contract Start Date Order (the "Effective Service Date").

Recurring Subscriptions shall be invoiced annually in advance, commencing on the Effective Service Date and on each successive anniversary thereof.

For all other services, Company will submit invoices for services to the Customer by the 10th of the month following the month in which Company provided services and Company's invoice will have a date, an invoice number, a purchase order number and a description of the goods or services.

Terms & Conditions Information

This Order and all products and services herein are subject to and limited to the terms and conditions located at <https://www.routeware.com/Clients>. Any purchase orders issued in response to this Order, will be deemed acceptance of such terms. <https://www.routeware.com/Clients> Password: RWClient1!

Prices are exclusive of any federal, state, or local taxes. The customer is responsible for all federal, state, and local taxes.

This system requires a specific server to operate Routeware software, which may need to be purchased separately.

This system requires cellular connectivity for each vehicle which may need to be purchased separately.

If route sequencing by Routeware is a requirement, additional professional services fees may apply.

On-Board Computer software is sold as a perpetual license, allowing the license to be activated on replacement hardware.

Any lapse in support voids perpetual license.

Pricing does not include freight cost or travel expenses, which will be invoiced as they are incurred.

Additional Terms -

"RST Data Import - Prepaid" allows four (4) data import per every twelve (12) months. A quote for any additional imports will be provided upon request.

City of Porterville, CA

Signature: _____

Date: _____

Name (Print): _____

Title: _____

Routeware, Inc., and affiliates

Signature: _____

Date: _____

Name (Print): _____

Title: _____

Please sign and email to Sean Ostlund at sostlund@routeware.com

FOR INTERNAL USE ONLY
Reviewed By:



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to Reject All Bids for Mini Side Load Refuse Truck RFP No. 24-25-SR1985 and Reissue with Revised Specifications

SOURCE: Public Works

COMMENT: On August 20, 2024, the City Council authorized the distribution of RFP No. 24-25-SR1985 to procure two mini-auto side-loader refuse trucks to enhance refuse collection at high-usage transit bus stops and the downtown transit center. The RFP aimed to secure vehicles that could improve efficiency, reduce fuel consumption, and operate effectively in confined areas. The engineer's estimate for the project was set at \$400,000, funded in part by a \$320,000 Federal Transit Administration (FTA) grant with an \$80,000 local match covered by Local Transportation Funds (LTF).

After reviewing the proposals, it was found that none of the submitted bids met the engineer's estimate. A Best and Final Offer (BAFO) request was issued on October 23, 2024, to give vendors an opportunity to adjust their bids. However, no proposals were received within the budgeted engineer's estimate, even after considering possible adjustments such as left-hand steer-only configuration and alternative chassis and body options.

Following the evaluation process, staff identified several challenges, prompting the recommendation to reject all bids:

1. Budgetary Constraints: All proposals, even after the BAFO process, exceeded the project's budget, making them financially infeasible within the allocated funds.

2. Specification Revisions Needed: The original specifications may have contributed to higher bid prices. Updating the project specifications could help attract proposals that meet operational needs while aligning with budgetary constraints.

3. Compliance with Federal Requirements: Due to FTA funding, the project must adhere to federal guidelines. The FTA mandates that for procurements of \$150,000 or more, recipients must use a competitive sealed bid process unless conditions are not appropriate for its use. This ensures transparency and competitiveness in the procurement process.

Item No. 5.

Staff believes that revised specifications may yield more competitive bids that remain compliant with FTA procurement standards.

To better meet budgetary requirements, staff recommends rejecting all bids and reissuing the RFP with updated specifications. This revision will focus on cost-effective solutions that fulfill the City's operational objectives within the engineer's estimate. In addition, rejecting the current bids will have no immediate financial impact.

RECOMMENDATION: That the City Council:

1. Reject all bids submitted for RFP No. 24-25-SR1985; and
2. Direct staff to reissue the RFP with updated project specifications to align with budgetary requirements.

ATTACHMENTS:

1. August 20, 2024 Staff Report
2. RFP 24-25-SR1985 Best and Final Offer

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – AUGUST 20, 2024

SUBJECT: Authorization to Distribute a Request for Proposals for Two Mini Side Loading Refuse Trucks

SOURCE: Public Works

COMMENT: The City's current transit operations include servicing trash receptacles at 150 transit bus stops and the downtown transit center. These receptacles often require frequent servicing due to high usage, particularly in areas with heavy pedestrian traffic and high ridership. In the past, this task was either performed using larger refuse trucks or using pickup trucks and trailers.

To improve efficiency and reduce operational costs, the Transportation Department proposes the acquisition of two mini refuse trucks specifically designed for servicing smaller trash receptacles. These smaller, more maneuverable trucks will allow for easier access to bus stop areas, reduce fuel consumption, and minimize the impact on city streets.

The proposed RFP will seek vendors who can supply mini refuse trucks that meet the city's operational requirements. The RFP will include specifications for the trucks, including size, capacity, fuel efficiency, and durability. Proposals will be evaluated based on cost and compliance with the City's specifications.

The Independent Cost Estimate (ICE) for the project is \$400,000. Funding is sourced from a Federal Transit Administration (FTA) grant amounting to \$320,000. A local match of \$80,000 is required, which will be covered by Local Transportation Funds (LTF). These funds have been appropriated in the FY 2024-2025 Budget. The negotiated contract will be presented to the Council for final approval.

RECOMMENDATION: That the City Council:

1. Approve the draft Request for Proposals;
2. Authorize staff to advertise for proposals on the project; and
3. Authorize staff to negotiate with the most responsive and responsible Proposer who has demonstrated the ability to perform the project in an acceptable manner and is most advantageous to the City.

ATTACHMENTS: 1. Draft Request for Proposals - Mini Side Load Refuse Truck

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



October 23, 2024

Subject: Best and Final Offer Request – Mini Side Load Refuse Truck Proposals

Dear Proposer's,

Thank you for submitting your proposal in response to the City of Porterville's Request for Proposals (RFP) No. 24/25-SR1985 for two (2) Mini Auto Side Load Refuse Trucks. After careful evaluation of the proposals, the City is now requesting a Best and Final Offer (BAFO) from your company to finalize the selection process.

As part of your BAFO, you may revise and adjust your proposal based on the following considerations:

1. **Left-Hand Steer Only:** The City is interested in exploring options for left-hand steer-only configurations. Please indicate if your company can provide this option and any associated cost adjustments.
2. **Chassis and Body Configuration:** The City requests that you consider revising your proposal specifications to include an Isuzu chassis paired with an 8-yard refuse body, such as the New Way Mamba, Curbtender Tomcat, or a similar model. Any revisions to the chassis and body combination should be clearly detailed, including any impact on cost, delivery, and performance.

Your Best and Final Offer must be submitted by email to Richard Tree, Transportation Director, at rtree@ci.porterville.ca.us, no later than **2:00 PM on November 7, 2024**. Please ensure that any changes in pricing, technical specifications, or delivery schedule are clearly outlined.

We appreciate your continued interest in partnering with the City of Porterville on this important project and look forward to receiving your Best and Final Offer.

Sincerely,

Richard Tree
Transportation Director
City of Porterville



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Amendment No. 1 to 4Creeks, Inc. Newcomb Street & Mulberry Avenue Traffic Signal Design Service Agreement

SOURCE: Engineering and Project Management

COMMENT: 4Creeks, Inc. is under contract with the City to design and provide plans and specifications for the Newcomb Street & Mulberry Avenue Traffic Signal Project. In an effort to improve storm drain runoff in the area, staff has requested that 4 Creeks, Inc. include the design of the extension of the existing storm drain main along Newcomb Street from approximately 550 feet (550') north of Mulberry Avenue southward to this intersection. The design contract will also include the required catch basins, storm drain manholes, alterations to the existing cross gutters, and modifications to the curb ramp at the intersection's southeast corner.

Staff is seeking an amendment to the 4 Creeks, Inc. Service agreement for the added design work described herein to deliver a complete set of plans and specifications. Cost for the additional design services is \$10,861 for a revised contract total of \$150,000. Funding for the design of this project is provided by Measure R Local Funds as approved in the Fiscal Year 2024-2025 Budget.

Staff has found the negotiated price acceptable.

RECOMMENDATION: That the City Council:

1. Authorize the Engineering & Project Management Director to execute Addendum No. 1 to the 4 Creeks, Inc. Service Agreement at an agreed upon fee of \$10,861 for the services described herein; and
2. Authorize progress payments up to one hundred percent (100%) of the fee amount.

ATTACHMENTS:

1. Locator Map
2. 4Creeks, Inc. - Contract Amendment No. 1

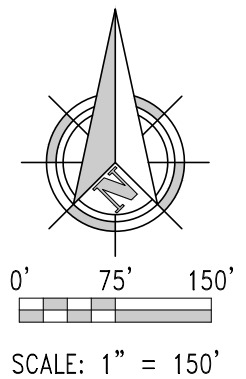
Appropriated/Funded:

Review By:

Department Director:

Javier Sanchez, Engineering & Project Management Director

Final Approver: Patrice Hildreth, City Manager



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

TRAFFIC SIGNAL PROJECT
NEWCOMB STREET AND
MULBERRY AVENUE

DRAWN BY	GG
CHECKED BY	
SCALE	1" = 150'
DATE	11/15/2023

SHEET
1
OF
1

November 13, 2024

Ms. Sarah Weaver

Project Manager
City of Porterville
291 N. Main Street
Porterville, CA 93257

Subject: Newcomb St. & Mulberry Ave. Traffic Signal – Contract Amendment 1
4Creeks Project No. 22549

Dear Ms. Weaver,

We have prepared a scope of work and fee for the additional services required to complete the plans, specifications, and opinion of probable construction costs (PS&E) for the proposed Newcomb Street and Mulberry Avenue traffic signal project. Our understanding is that the additional scope of work includes the following:

Task 8: Storm Drain Extension on Newcomb St. from W. Mulberry Ave. to 550' North

4Creeks will design a storm drain main extension on Newcomb Street from the existing SDMH located at the northern property line of 1000 N. Newcomb Street (Porterville Church of Christ) southward to the intersection with W. Mulberry Avenue.

- 4Creeks will dip manholes and drainage inlets for the storm drain extension between W. Mulberry Avenue and San Lucia Avenue.
- 4Creeks will design approximately 720 LF of 18" storm drain main on Newcomb Street that will extend from the existing SDMH near the Porterville Church of Christ southward to the intersection with W. Mulberry Street and a stub to the south for future connection. 4Creeks will design two (2) catch basins south of the intersection of Newcomb Street and W. Mulberry Avenue as well as three (3) new SDMHs.
 - The cross gutters on the west and east sides of the intersection will be eliminated. A pavement patch will be designed.
- 4Creeks proposes including the SE corner curb ramp into the scope of this task. The removal of the cross gutter would require sawcutting at the flow line of the curb return. Rather, we would like to propose dual directional curb ramps at this corner to match the rest of the intersection.

The above **Task 8** services will be provided for a **Fixed Fee of \$10,861.**

Total Contract Amendment 1 = \$10,861.

Exclusions

- Any work not specifically listed in this scope of services.

If you have any questions or need any additional information, please feel free to give us a call to discuss.

Sincerely,



Lisa M. Wallis-Dutra, PE 71262, TE, PTOE, RSP,
Senior Civil Engineer



Matthew D. Ainley, PE 66233
Principal-In-Charge

Project: Newcomb St. & Mulberry Ave. Traffic Signal – Contract Amendment 1

City of Porterville Approval:

Signature

Date

Print Name and Title



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to enter into General Services Agreement with Western Pump, Inc. for Fuel System Upgrades

SOURCE: Public Works

COMMENT: The City of Porterville issued RFP No. 24/25-SR1978 on August 20, 2024, to solicit proposals for Fuel System Upgrades at the City Corporation Yard and Porterville Airport. The project, funded in part by the Federal Transit Administration (FTA), includes replacing the fuel management system software, dispensers, gate controllers, cellular modems, and contactless tags and cards to improve fuel system infrastructure and ensure compliance with federal funding requirements.

Proposals were due on September 24, 2024. The City received submissions from multiple qualified vendors, and the following vendors were evaluated and scored:

Vendor	Score
Western Pump	100
West Star	98

Western Pump received the highest score, demonstrating a comprehensive understanding of the project scope, relevant experience with federally funded projects, and a competitive cost proposal. Their proposed approach aligns with the City's objectives for enhanced fuel management and regulatory compliance.

Under the General Services Agreement, Western Pump will:

- Replace specific fuel dispensers at designated locations within the City.
- Adhere to all federal, state, and local requirements, ensuring FTA compliance.
- Complete the project on schedule, coordinating closely with City staff for minimal service disruption.

The total project cost is not to exceed \$365,000, in alignment with the Federal Transportation Improvement Program (FTIP) and the City's FTA

grant application CA-6260-2. The Fuel System Upgrades Project is funded at eighty percent (80%) by the FTA, totaling \$292,000 in federal funds, with the remaining twenty percent (20%), or \$73,000, covered by Local Transportation Funds (LTF). This budget structure is consistent with the project's federal and local funding allocations, ensuring full compliance with funding and project requirements.

RECOMMENDATION: That the City Council:

1. Approve the General Services Agreement between the City of Porterville and Western Pump, Inc. for the Fuel System Upgrades Project at a total project cost not to exceed \$365,000; and
2. Authorize the Mayor, or designee, to execute the agreement and any related documents, subject to final review by the City Attorney.

ATTACHMENTS: 1. Porterville RFP # 24-25-SR1978_Plan Holders

2. Porterville RFP # 24-25-SR1978 Scoring Matrix
3. WP General Services Agreement
4. Exhibit A - RFP# 24-25-SR1978
5. Exhibit B - Addendums
6. Exhibit C - Western Pump Proposal
7. Exhibit D - FTA Terms and Conditions

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager

Plan Holders

Agency

Bid Number

Bid Title

City of Porterville

24/25-SR1978

Request for Proposals - Fuel System Upgrade

Name	Contact	Address	Phone	Email	Proposal	
					Yes	No
Montauk	Tracy R Kirby	41085 Elm Street Murrieta, CA, 92562,	(951) 813-2084	abdul@bidamerica.com		X
FUEL SERV	Robert Rodriguez	5196 Benito St Suite 6 Montclair, CA, 91763,	(800) 581-3710	robert@fuelservinc.com		X
Western Pump, Inc.	John Hendrick	3235 F St. San Diego, CA, 92102,	(310) 463-4276	jhendrick@westernpump.com	X	
Tulare Kings Counties Builders Exchange	Berenice Ruiz	823 W. Center Ave , Visalia, CA 93291	(559) 732-4568	bruiz@tkcbe.com		X
WEST STAR ENVIRONMENTAL, INC	DAVE MENDRIN	4770 W. JENNIFER AVE. , FRESNO, CA 93722	(559) 647-5451	davem@west-star.net	X	

RFP 24/25-SR 1978
Fuel System Upgrades
Scoring Matrix

	Points	West Star	Western Pump
Understanding of the Scope of Work	20	20	20
Demonstrates a clear understanding of the LCFS services required.			
Technical Approach and Methodology	20	20	20
Proposal outlines a comprehensive and feasible approach to providing the required services.			
Experience and Qualifications	20	20	20
Firm's experience with similar projects, particularly federally funded transit projects			
Key Personnel and Project Team	10	10	10
Qualifications of key personnel who will be assigned to this project.			
Price Proposal	30	28	30
Competitive and reasonable cost in			
Total Points	100	98	100

**CITY OF PORTERVILLE
GENERAL SERVICES AGREEMENT WITH
WESTERN PUMP FOR FUEL SYSTEM UPGRADES**

This Fuel System Upgrades Agreement (this "Agreement") is dated as of the ____ day of _____, 2024 (the "Effective Date") by and between City of Porterville, a charter city and municipal corporation ("City"), and Western Pump, a California corporation ("WP"). The City and WP may be referred to herein as a "Party" individually and the "Parties" collectively.

RECITALS

WHEREAS, on August 20, 2024, the City issued a Request for Proposals No. 24/25-SR1978 for the Fuel System Upgrades Project (the "RFP") as described in Exhibit A;

WHEREAS, on September 10, 2024, the City provided certain responses to questions submitted during the RFP process, as described in Exhibit B;

WHEREAS, on September 24, 2024, WP submitted its proposal outlining its services, qualifications and technical capabilities for the fuel system upgrades project as described in Exhibit C;

WHEREAS, the City owns fueling facilities located at 555 N. Prospect Street, Porterville, CA 93257 and 1893 Newcomb St, Porterville, CA 93257 (the "Facilities") on property owned by the City (the "Property");

WHEREAS, the City desires for WP to provide Services (hereinafter defined) at the Facilities on the City's behalf, upon the terms set forth herein.

NOW THEREFORE, in consideration of the respective covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Term of Agreement.** The initial term of this Agreement shall commence on the Effective Date and end when the City Council accepts the project as complete. The initial term and any renewal terms are referred to herein as the "Term."

2. **License for Access to Facilities.** The City hereby grants to WP during the Term, a license for ingress, egress, and general access to the Facilities and the Property to the extent necessary for WP to perform the project (as defined below).

3. **Fuel System Upgrades**

(a) **WP's Responsibilities.** The City hereby engages WP as the exclusive service provider for the products and services at the Facilities as described in Exhibit A and Exhibit B, attached hereto, and to perform certain other services relating to the Facilities, as described in Exhibit C, attached hereto, (collectively, the "Services"), all on the terms and conditions and as more fully described in this Agreement. WP hereby accepts such

engagement and agrees to perform the Services in accordance with the terms and conditions of this Agreement.

(b) **Fees.** As consideration for providing the Products and Services under this Agreement, the City shall pay WP the amounts set forth in Exhibit C attached hereto, with total payments not to exceed \$365,000.

(c) **Service Guidelines.** WP shall provide the Products and Services in material compliance with any and all Applicable Laws. For purposes of this Agreement, "Applicable Law" shall mean (a) all applicable federal, state, and local statutes, laws, requirements, decrees, ordinances, and codes, of all governmental authorities, including any federal, state, and local governments or any departments, bureaus, or agencies thereof having jurisdiction over the Property or the Facilities; and (b) all other applicable rules, regulations, interpretations, and orders of any commissions, boards, agencies, or other legislative, executive, judicial, or other governmental or quasi-governmental bodies or officers having jurisdiction to regulate or supervise the Property or the Facilities.

(d) **Training of Personnel.** WP shall be responsible for the selection and training of all WP employees or contractors that perform Services pursuant to this Agreement. All personnel employed or controlled by WP shall be appropriately trained and shall comply with all applicable safety processes and procedures standard for the services at the Facilities as described in Exhibit A.

(e) **Permits and Approvals.** The City shall, at the City's cost, be responsible for obtaining and maintaining any licenses, permits, or approvals required to operate and maintain the Property and the Facilities, except for any such licenses, permits or approvals that WP is legally required to obtain in its name in connection with its provision of the Services.

(f) **Property Conditions.** If, at any time during the Term, it is determined that underground hazards, soil contaminants and/or soil conditions exist (including, without limitation, migratory pollution or other migratory conditions) that were not brought to the Property by WP and that either (a) require removal, replacement, and disposal of soils or materials, (b) require remediation, or (c) require unanticipated soil or foundation preparation work, WP shall not be financially and/or legally responsible for such underground hazards, soil contaminants and/or soil conditions and any required remediation, removal, replacement preparation work, and/or disposal. If the City does not commence, within ten (10) days after discovery of any such underground hazard or soil contaminant or soil condition, and thereafter diligently prosecute to completion the correction of such condition, WP may, without further obligation or penalty, terminate this Agreement by written notice to the City, and the City shall pay WP all amounts which accrued up to the date of the termination and reimburse WP for any and all reasonable costs related to the repair and maintenance of the Facilities, paid or irrevocably committed to by WP prior to the date of the termination. This Section shall survive the termination of this Agreement.

4. The City's Obligations and Responsibilities.

(a) **Maintenance of Property.** The City shall be responsible for and shall at its own expense maintain the surrounding Property in the vicinity of the Facilities.

(b) Payment of WP Billings. The City shall pay each invoice submitted by WP within thirty (30) days following receipt of the invoice by the City. For purposes of this Section, receipt shall be defined as the day the invoice is transmitted by WP. Any payments not made when due shall accrue interest on the unpaid amount at a rate of 10% per annum, calculated from the date payment is due to and including the date payment is received by WP. **IF PERMITTED BY LAW, WP SHALL PASS THROUGH TO THE CITY ANY SURCHARGES INCURRED BY WP RELATED TO THE CITY'S PAYMENT OF ITS INVOICES THROUGH USE OF A CREDIT CARD.**

In the event that the City fails to make payments in a timely manner or fails to meet WP's continuing credit approval, WP may suspend any and all services provided under this Agreement, until such time as the City brings payments current and meets WP's continuing credit approval.

(c) Compliance with Law. In performing its obligations under this Agreement, the City shall comply in all material respects with all Applicable Laws.

(d) Materials. In the event that the City has required WP to store materials on the Property for the Facilities, upon the expiration or termination of the Agreement, the City shall purchase all materials stored on the Property by WP at such time at a mutually agreeable price no less than documented WP's purchase price.

5. Termination.

(a) For Convenience. The City may terminate this Agreement, in whole or in part, at any time for its convenience and without cause by providing WP with thirty (30) days' written notice. In the event of such termination, the City shall be liable only for payment for services satisfactorily rendered and expenses incurred up to the effective date of termination. WP shall not be entitled to any other form of compensation, including for anticipated profits or unperformed services.

(b) For Default or Breach. Either Party may terminate this Agreement for default if the other Party: (a) becomes insolvent; (b) files any proceeding in bankruptcy, or acquires bankruptcy status; (c) has a receiver or receiver manager appointed with respect to it or any of its assets; or (d) seeks the benefit of any statute providing protection from creditors. Either Party may also terminate this Agreement for breach if the other Party materially breaches any provision of this Agreement provided: (i) the non-breaching Party provides the breaching Party with written notice of breach and a thirty (30) day period within which to cure such breach ("Cure Period"); and (ii) the breaching Party fails to cure each such breach within the Cure Period provided, however, that where it is not commercially reasonable to fully effect a cure to the other Party within the thirty (30) day period set forth above, the Party in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such thirty (30) day period and thereafter proceeds diligently to cure the breach to the reasonable satisfaction of the non-breaching Party. Any termination of this Agreement shall be without prejudice to each right and/or remedy which the non-breaching Party may possess against the breaching Party under this Agreement, at law, in equity, and/or otherwise. In the event of termination, the City shall pay WP all amounts which accrued up to the date of the termination and reimburse WP for any and all reasonable costs related to the repair and maintenance of the Facilities, paid or irrevocably committed to by

WP prior to the date of the termination. The preceding sentence shall survive termination of this Agreement.

6. **Ownership of Facilities and Improvements.** As between WP and the City, all right, title, and interest in and to the Facilities and any improvements made to the Facilities shall at all relevant times remain with the City. The City retains all rights in and to the Facilities and any improvements thereon.

7. **Warranty.**

With respect to services performed by WP pursuant to this Agreement, for a period of one (1) year from the date of performance of such services (the "Warranty Period"), WP warrants to the City that the services shall be free from defects in workmanship (the "Warranty").

If the City gives WP prompt written notice of breach of this Warranty during the Warranty Period, WP shall, at its sole option and as the City's sole remedy, either re-perform the service (the City to provide WP with unencumbered access to the Property and equipment) or refund the purchase price therefore. The City shall bear the costs of access for WP's remedial Warranty efforts (including removal and replacement of systems, structures or other parts of the City's facilities), de-installation, re-installation and transportation of the parts to WP and back to the City. If WP determines that any claimed breach is not, in fact, covered by this Warranty, the City shall pay WP its then customary charges for any re-performance completed by WP, or, in the event WP refunded the City the purchase price, the City shall return the purchase price to WP. WP's warranty is conditioned on the City's (a) operating and maintaining the applicable work in accordance with WP's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to WP. WP's warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by WP). Warranty repair or replacement shall not extend or renew the applicable Warranty Period.

With respect to equipment, part(s) or material(s) provided by WP to the City pursuant to this Agreement, WP hereby assigns to the City, to the extent assignable, any warranties made to WP by the applicable manufacturer or supplier, and WP shall have no other liability to the City related to the supplied equipment, part or material under warranty, tort or any other legal theory.

THE WARRANTIES SET FORTH IN THIS SECTION ARE WP'S SOLE AND EXCLUSIVE WARRANTIES. WP MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT.

8. **Indemnification.**

(a) WP hereby agrees to indemnify, hold harmless and defend the City, and its officers, directors, employees and agents (collectively, the "City Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the City Indemnitees may hereafter

suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) WP's material breach of any representations, covenants or warranties of WP set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of WP, its employees, officers, owners, directors or agents in the performance of this Agreement; or (c) the material violation of any law, ordinance or regulation by WP. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the City Indemnitees.

(b) The City hereby agrees to indemnify, hold harmless and defend WP, and its officers, directors, employees and agents (collectively, the "WP Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the WP Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) the City's material breach of any representations, covenants or warranties of the City set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of the City, its employees, officers, owners, directors or agents in the performance of this Agreement; (c) the material violation of any law, ordinance or regulation by the City; or (d) any pre-existing or migratory environmental condition or hazard. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the WP Indemnitees.

9. Insurance Requirements.

The City and WP shall each procure at their respective expense, and maintain in full force and effect during the Term of this Agreement, including any renewals, with insurance carriers rated at least A- VII or Better in A.M. Best's Insurance Report and admitted to do business in the state where the Facilities is located, the following primary insurance in at least the minimum amounts specified, with the other respective Party named in the commercial general liability policy (or excess liability or umbrella liability policy, if applicable) and the automotive liability policy as an additional insured and including a transfer of rights or waiver of subrogation endorsement. Such insurance, excluding workers compensation, shall be endorsed to require at least thirty (30) days' written notice to the other respective Party of cancellation.

(a) Commercial General Liability Insurance, including coverage at least as broad as the latest version of the Insurance Service Office Commercial General Liability coverage (occurrence form CG001) to a combined single limit of not less than \$1,000,000. Excess liability or umbrella liability coverage may be used to evidence or provide limits in addition to primary limits of no less than \$1,000,000 on the commercial general liability policy.

(b) Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of \$1,000,000.

(c) Workers Compensation and Employers Liability

(i) Workers' compensation in compliance with applicable state and federal laws.

(ii) Employers' liability with a limit of not less than \$1,000,000.

The requirements for carrying the foregoing insurance shall not derogate from the provisions of indemnification as set forth in this Agreement. If a Party maintains higher limits than the minimums shown above, the other Party requires and shall be entitled to coverage for the higher limits maintained.

The City shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

Western Pump
3235 F Street
San Diego, CA 92102
Attn: John Hendrick
Phone: (310) 463-4276
Email: jhendrik@westernpump.com

WP shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

City of Porterville
555 N. Prospect St
Porterville, CA 93257
Attn: Richard Tree
Email: rtree@ci.porterville.ca.us

10. Assignment. Neither Party shall have the right to assign its rights or obligations hereunder, in whole or in part, without obtaining the prior written consent of the other Party and any attempted assignment without such prior written consent shall be void. Permitted assigns shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

11. Liens. The City represents that it is the owner of the Property and has full authority to enter into this Agreement. So long as the City is not in breach of any term of this Agreement and has timely paid all of WP's invoices, then WP shall make timely payment to all contractors performing work on behalf of WP and shall, at its expense, cause any lien filed by any contractor performing work on behalf of WP to be canceled or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise within thirty (30) days after WP receives actual notice of the filing of such lien, charge, or order for the payment of money.

12. Relationship of Parties. WP and the agents and employees of WP in the performance of this Agreement shall act in an independent capacity as independent contractors and not as officers or partners or employees or agents of the City.

13. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the State of California.

14. Attorneys' Fees. In the event of any litigation between the Parties concerning any provision of this Agreement or the rights and obligations of any party in relation thereto, the prevailing Party shall be entitled to an award for all costs incurred by reason of such litigation, including but not limited to reasonable attorneys' fees and fees and expenses of witnesses. The trier of fact shall designate the prevailing Party.

15. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by certified mail, return receipt requested, or overnight courier or facsimile to the other Party at such address as set forth below:

If delivered to City:

City of Porterville
Attn: Richard Tree
555 N. Prospect St
Porterville, CA 93257
Email: rtree@ci.porterville.ca.us

If delivered to WP:

Western Pump
3235 F Street
San Diego, CA 92102
Attn: John Hendrick
Phone: (310) 463-4276
Email: jhendrik@westernpump.com

Each Party shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other Party. Without limiting any other means by which a Party may be able to prove that a notice has been received by the other Party, a notice shall be deemed to be duly received:

- (a) if sent by hand, the date when left at the address of the recipient;
- (b) if sent by certified mail, the date of the return receipt;
- (c) if sent by overnight courier, the date when receipt is acknowledged at the address of the recipient; or
- (d) if sent by facsimile, the date of the confirmation.

16. Force Majeure. If either Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, interruptions in utility services, the cessation of providing necessary products or services to WP by any supplier to WP, labor disputes, catastrophic equipment failures due to extraordinary events beyond the control of WP, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected

Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from any payment obligations hereunder.

17. Limitation of Liability. Neither Party shall have any liability to the other Party for special, consequential, or incidental damages, except however in connection with a claim made against either Party by a third party, provided that such claim arises out of or results from the negligence or willful misconduct or any other claim within the scope of the indemnity obligations of WP or the City, as applicable, under this Agreement.

18. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties, and is not intended to create any benefits to any third parties.

19. Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

20. Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

21. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

22. Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

23. Representation regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

24. Incorporation of FTA Terms. The preceding provisions, as described in Exhibit D, include in part certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT) Federal Transit Administration (FTA), whether or not expressly set forth in this Agreement. All contractual provisions required by FTA are hereby incorporated by reference, and any conflicts between FTA requirements and other contract provisions shall be resolved in favor of FTA requirements. WP shall not perform any act or fail to perform any act that would cause the City to be in violation of FTA requirements.

25. Order of Precedence. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (i) Exhibit D (FTA Terms and Conditions); (ii) the body of this Agreement, (iii) Exhibit A (RFP 24/25-SR1978), (iv) Exhibit B (Addendums) and (v) Exhibit C (WP Proposal).

26. Miscellaneous. This Agreement, along with the exhibits and appendix attached hereto, constitutes the complete and exclusive agreement and understanding between the Parties and supersedes all prior communications and agreements, whether oral or written. The Parties expressly agree that there are no other agreements, understandings, restrictions, warranties, and/or representations by, between and among the Parties relating to the subject matter of this Agreement other than those expressly set forth herein or herein provided for. This Agreement may only be modified by an instrument that is executed by each Party's duly authorized representative. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which collectively constitute one (1) and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the Effective Date.

CITY OF PORTERVILLE

WESTERN PUMP

By: Martha A. Flores

By: _____

Title: Mayor

Title: _____

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No. 24/25-SR1978
- B. Addendums
- C. Western Pump Proposal
- D. FTA Terms and Conditions

EXHIBIT A

RFP 24/25-SR1978

EXHIBIT B

RFP 24/25-SR1978 ADDENDUMS

EXHIBIT C

WESTERN PUMP PROPOSAL

EXHIBIT D

FTA TERMS & CONDITIONS



**CITY OF PORTERVILLE
REQUEST FOR PROPOSAL RFP No. 24/25-SR1978
FUEL SYSTEM UPGRADES**



August 20, 2024

The City of Porterville does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities. It is the City's policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities.

The project is funded in part by the Federal Transit Administration Catalog of Federal Domestic Assistance (CFDA) 20.500 and 20.507. The City of Porterville reserves the right to reject any or all proposals.



**CITY OF PORTERVILLE, CALIFORNIA
REQUEST FOR PROPOSALS (RFP) NO. 24/25-SR1978
FUEL SYSTEM UPGRADES**

SEALED PROPOSALS will be received by the Transportation Department located at 291 N. Main Street, Porterville, CA 93257, until 2:00 P.M. on Tuesday, September 24, 2024, for the Contract to provide Fuel System Upgrades.

A mandatory site visit is **REQUIRED** in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us. The site visit will be concluded on September 21, 2024, at 10:00 am.

This contract is federally funded and as such, the Federal Requirements associated with the performance of services under this contract have been included with this RFP. The awarded Proposer will be responsible for adherence to all local, state, and federal requirements listed herein. These requirements are hereby incorporated into the subsequent contract arising from this RFP.

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. All addenda and correspondence during the process will be handled electronically through the Public Purchase website.

The City has not established a DBE goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract. The City of Porterville overall DBE goal is 1% of total contracts (including subcontracts) awarded.

The City hereby affirmatively ensures that Minority Business Enterprises and Disadvantaged Business Enterprises (DBE) will be afforded the full opportunity to submit proposals in response to this notice. Individuals and/or entities submitting bids/proposals to the City of Porterville will not be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, gender, gender identity or expression, age, sexual orientation, or military or veteran status in any consideration leading to the award of contract.

The right is reserved by the City of Porterville to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Publication Dates:

August 20, 2024

Table of Contents

Section I - Instructions	4
Section II – Standard Terms and Conditions	14
Section III – Special Terms and Conditions	25
Section IV – Insurance and Indemnification	34
Section V - SCOPE OF WORK	38
Section VI – Federal Transit Administration (FTA) Terms and Conditions	44
Exhibit A – Required Forms	69
Exhibit B – Sample General Services Agreement	76
Attachment 1	85

Section I - Instructions

RFP/Agreement Schedule

Event	Date of Event
RFP Available to the public	August 20, 2024
Required Site Tour	Pre-Scheduled
Deadline to submit questions	September 10, 2024
Proposal submittal deadline @ 2:00 pm PST	September 24, 2024
Short list established and vendors notified	October 3, 2024
Interviews/Presentation with short-listed vendors (if required)	October 9, 2024
Award of Contract @ City Council Meeting	October 15, 2024
Contract Begins	November 1, 2024

City's Vendor Self-Registration and Notification

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. No proposal shall be received from an individual or firm that has not accessed the proposal documents from the Public Purchase website. All addenda and correspondence during the process will be handled electronically through the Public Purchase website. Questions regarding this request for proposals must be submitted through the Public Purchase website.

Background

The City of Porterville ("CITY") is located in Tulare County, which is part of the Central San Joaquin Valley of California. The San Joaquin Valley is a rich agricultural area and Tulare County is recognized as the largest agricultural-producing county in the world.

Porterville has a land area of approximately 14.3 square miles (9,161 acres), situated at the base of the foothills of the Sierra Nevada Mountain Range. It is approximately 30 miles southeast of Visalia (the County seat); 60 miles northeast of Bakersfield, 165 miles northeast of Los Angeles, and 254 miles southeast of San Francisco. State Routes 65 and 190 bisect the community.

The Porterville City Council is the policy-making body for the City of Porterville's Transportation Department. It adopts the Short-Range Transit Plan, and through the annual budgetary process, establishes operational and funding levels for the system. The City Council also sets operational policies and parameters.

Management of the City's public transportation system, referred to as Porterville Transit, is an integrated function of the City of Porterville. The Transportation department is responsible for the overall management of the service. The City is also responsible for the maintenance of the transit fleet, through its Field Services Division.

The City outsources, to a private contractor, to perform daily operations of Porterville Transit. The Director of Transportation is responsible for the overall administration, planning, monitoring, and

marketing of the system. The Director of Transportation also acts as a liaison to the Tulare County Association of Governments (TCAG), the California Department of Transportation (Caltrans) and the Federal Transit Administration (FTA). The contracted local General Manager is responsible for the day-to-day operations management; the hiring, testing, training and supervision of all drivers and dispatch staff; fare collection; reporting; ridership data collection; and the operation of Porterville Transit vehicles in accordance with City policy and all State and Federal regulations. The County of Tulare contracts with the City of Porterville to provide transit service to unincorporated areas surrounding Porterville. The County reimburses the City for service provided to County residents using Local Transportation Funds (LTF).

Porterville Transit provides an array of transportation services in the form of fixed route bus services, ADA complementary paratransit, and innovative On-Demand services.

Preparation of Offer

1. Any person (“Proposer”) submitting a Proposal (“Proposal”) in response to this Request for Proposals (“RFP”) shall examine the Scope of Work carefully and be informed thoroughly regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract to be awarded under this RFP (the “Contract”). No allowances shall be made because of lack of knowledge of any specifications, conditions, or requirements of this RFP.
2. All forms provided must be completed and submitted with your Proposal.
3. It is permissible to copy submittal forms if necessary. Erasures, interlineations, or other modifications of the Proposal must be initialed in original ink by the authorized person signing the offer. No Proposal will be altered, amended, or withdrawn after the specified offer due date and time. The City is not responsible for Proposer’s errors or omissions.
4. All time periods stated as a number of days will be calendar days.
5. It is the responsibility of all Proposers to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after due date and time. Proposers are strongly encouraged to:
 - 1) Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 2) Study and carefully correlate Proposer’s knowledge and observations with the RFP document and other related data.

- 3) Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which a proposer has discovered in or between the RFP document and such other related documents.
- 4) The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Proposer is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- 5) Proposers are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Proposals offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 6) Proposers' responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products proposed. Proposals submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 7) Prices shall be submitted on a per unit basis by line item, when applicable. Failure to submit any unit pricing will be sufficient grounds for the City to consider the proposal to be non-responsive. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

Exceptions

Proposer must not take any exceptions to any terms, conditions or material requirements of this solicitation. Proposals submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Proposals must conform to all the requirements specified in the solicitation. The City encourages Proposers to send inquiries to the procurement officer rather than including exceptions in their Proposal.

Communications to City

All questions pertaining to this RFP, or any matters relating thereto the Scope of Work, or any questions pertaining to the RFP or RFP documents, shall be in writing and shall be submitted only through the Public Purchase website. Communications sent to any other person at the City or at any other address may, in the City's sole discretion, be deemed to be "non-responsive" and the

City in its discretion may elect to disregard any such questions. The City shall not respond to oral inquiries, and oral statements of any nature by the City or any of its representatives may not be relied upon for any purpose whatsoever.

Addenda

The City of Porterville will not be responsible for any oral instructions made by any employees or officers of the City of Porterville regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.

Business in California

The City will not enter contracts with Proposers (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of California, unless the proposer asserts a statutory exception prior to entering a contract with the City.

Licenses

If required by law for the operation of the business or work related to this Proposal, Proposer must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

Certification

By signing the Proposal, proposer certifies:

- The Proposer's submission of the Proposal did not involve collusion or other anti-competitive practices
- The Proposer shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Proposer has not given, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

Minimum Qualifications

- Proposer must have been in operation a minimum of five years.

Certificates of Insurance

Upon notification of a recommended award, the Proposer will have 14 calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive and responsible Proposer whose proposal, in the sole and absolute discretion of City, for providing the goods and/or services

contained in this solicitation, who have demonstrated the ability to perform in an acceptable manner, and is most advantageous to the City.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.

A response to a solicitation is a Proposal to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Proposals do not become contracts until they are executed by the Mayor. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual proposers or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under California Statutes, until the resulting contract(s) are awarded to all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Proposers may not discuss the solicitation with any City employees or evaluation panel members.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Porterville City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Proposals, the City Manager will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. **PROPOSERS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Proposer, regardless of whether the City responds to the contact. Proposers that violate this policy will be disqualified until the resulting contract(s) are awarded, or all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

Protest Process

In the event any person wishes to file a Protest regarding this RFP, such Protest shall be made in accordance with City’s FTA Procurement and Contract Administration Manual (which is available at www.ci.porterville.ca.us), the terms of which are hereby included herein by this reference. The City reserves the right to modify the terms of the protest procedure if it determines that such modification is in its best interest. Should there be any dispute between the City’s FTA Procurement and Contract Administration Manual and the provisions of this Section, the City in its discretion shall determine which provision governs.

By way of background, all Proposers understand and agree that the procurement process undertaken by virtue of this RFP is solely for the benefit of the City, and it is for the City to determine in its discretion which Proposal the City desires to accept. The City has provided for a Protest procedure not to grant any rights to any particular Proposer but, rather, to provide the City the opportunity to review and examine any information regarding any Proposal which it may not have fully evaluated. Thus, no Proposer has any legal right in connection with any Protest Proceeding and the City may, in its discretion, determine whether or not to reject any Protest.

In the event a Protest is rejected, the Proposer may appeal the rejection as set forth in the City’s FTA Procurement and Administration Manual or herein but, again, said appeal shall be decided by the City based upon what it determines to be in its best interest. As such, legal concepts (such as the California or Federal Rules of Civil Procedure and the Judicial Rules of Evidence) and other matters which may be applicable to judicial or other proceedings are not applicable to a Protest in accordance with the City’s FTA Procurement and Contract Administration Manual. In addition, the appeal process set forth in the City’s FTA Procurement and Contract Administration Manual is exclusive and upon the exhaustion of the appeal, no further appeal may be taken, or separate suit filed against the City.

By virtue of submitting its Proposal, any Protesting Party expressly agrees that its remedies are exclusively limited to the City’s Protest procedure set forth in the City’s FTA Procurement and Contract Administration Manual (as the same may be modified hereby) and that there shall be no appeal or litigation resulting from the final award of any Contract by the City. The foregoing is a material consideration in the consideration by the City of any Proposal.

Public Record

All Proposals submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to California State law. If a

Proposer believes that a specific section of its Proposal response is confidential, the Proposer will isolate the pages marked confidential in a specific and clearly labeled section of its Proposal response. A Proposer may request specific information contained within its Proposal is treated by the Procurement Officer as confidential provided the Proposer clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Proposers as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Proposer in writing of any request to view any portion of its Proposal marked “confidential.” The Proposer will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Proposer does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

Right to Disqualify

The City reserves the right to disqualify any Proposer who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the Proposer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Proposer waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City of Porterville or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Proposer.

Late Proposals

Late Proposals must be rejected, except for good cause. If a late Proposal is submitted, the Department will document the date and time of the submittal of the late Proposal, keep the Proposal and notify the Proposer that its Proposal was disqualified for being late.

Pre-Bid Meeting

A mandatory site visit is REQUIRED in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us.

Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award contracts.

Determining Responsiveness and Responsibility

Proposals will be reviewed for documentation of any required minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Proposals will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Proposals will render a Proposal nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a Proposal that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Proposer remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so in writing, the City may determine the Proposal to be nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by Contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Proposer be a responsible contractor. Responsibility includes the Proposer's integrity, compliance with public policy, skill, capacity, experience, record of past performance, financial and technical resources, and facilities for conducting the work to be performed.

The Procurement Officer will review each Proposal to determine if the Proposer is responsible. The City's determination as to whether an Proposer is responsible will be based on all information furnished by the Proposer, interviews (if any), any information at the City's request and information received from Proposer's references, including information about Proposer's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Proposer agrees to permit by submitting its Proposal, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Proposer's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Proposal.

Clarifications

The City may request written clarifications for such purposes as information gathering or eliminating minor irregularities in offers. Clarifications shall not otherwise afford the Offerors the opportunity to alter or change their offers.

Detailed Evaluation of Proposals and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the

overall consensus score. The overall consensus scores will determine the Proposer's rankings and which Proposals are within the Competitive Range, when appropriate.

Proposals Not Within The Competitive Range

The City may notify Proposers of Proposals that the City determined are not in the Competitive Range.

Discussions With Proposers In The Competitive Range

The City will notify each Proposer whose Proposal is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Proposer. Each Proposer so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Proposal. The Proposers in the competitive range may be required to provide a demonstration of their product.

Demonstrations - Proposers in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Porterville. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If a Proposal in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Proposer to remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so, the City may determine the Proposal is nonresponsive, and the City may revoke its determination that the Proposer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Proposer about other Proposals received in response to this solicitation. During discussions with Proposers in the Competitive Range, the City will not give Proposers specific prices or specific financial requirements that Proposers must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Proposers will not be told of their relative rankings before Contract award.

Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Proposer in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Proposal and make one BAFO.

If a Proposer's BAFO modifies its initial offer, the BAFO should include a "Change Log" identifying all modifications made to the Proposal. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Proposals. The City will adjust appropriately, at its sole discretion, the initial scores for criteria that have been affected by Proposal modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Proposal that is the most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to a Proposer whose Proposal is the highest rated and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

Section II – Standard Terms and Conditions

Contract Interpretation

Applicable Law

This Contract will be governed by the law of the State of California, and suits pertaining to this Contract will be brought only in Federal or State courts in Tulare County, State of California.

Contract Order Of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- Federal Terms and Conditions
- Special Terms and Conditions
- Standard Terms and Conditions
- Amendments
- Scope of Work
- Specifications
- Attachments
- Exhibits
- Instructions to Contractors
- Other documents referenced or included in the RFP

Organization – Employment Disclaimer

The Agreement resulting hereunder is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and will save and hold the City harmless with respect thereto.

Severability

The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

Non-Waiver of Liability

The City of Porterville as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable California law.

Parol Evidence

This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contract Administration and Operation**Records**

All books, accounts, reports, files, and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Porterville office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

Discrimination Prohibited

Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The Contractor will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts.

Equal Employment Opportunity and Pay

For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts.

For a Contractor with more than 35 employees: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

Documentation: Contractors may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

Monitoring: The City shall monitor the employment policies and practices of Contractors subject to this article as deemed necessary. The City is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

Health, Environmental and Safety Requirements

The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
- A list of all federal, state, or local (EPA, OSHA, Tulare County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this Agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

Compliance With Laws

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent Contractor, the City assumes no responsibility for the Contractor's acts.

Continuation During Disputes

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by a California Court of competent jurisdiction.

Emergency Purchases

The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

Costs and Payments

General

Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Proposal.

Payment Deduction Offset Provision

Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

Late Submission of Claim By Contractor

The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

Discounts

Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

No Advance Payment

Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

Fund Appropriation Contingency

The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

Maximum Prices

The City will not be invoiced at prices higher than those stated in any contract resulting from this Proposal. Contractor certifies, by signing this Proposal that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Proposal and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

F.O.B Point

All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

Contract Changes

Contract Amendments

Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

Assignment – Delegation

No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

Non-Exclusive Contract

Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

Risk of Loss and Liability

Title and Risk of Loss

The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

Acceptance

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

Force Majeure

Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

Loss of Materials

The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

Contract Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

Damage to City Property

Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

Non-Exclusive Remedies

The rights and remedies of the City under this Contract are non-exclusive.

Default In One Installment To Constitute Breach

Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

On Time Delivery

Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.

Default

In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

Covenant Against Contingent Fees

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

Cost Justification

In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Proposal price is fair and reasonable.

Work Product, Equipment and Materials

All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

Contract Termination

Gratuities

The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

Conditions and Causes for Termination

This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Contractor will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

State and Local Sales and Use Taxes

In accordance with applicable state and local law, sales and use taxes may be applicable to this transaction. The state and local sales and use tax burden and legal liability to remit taxes are on the vendor that is conducting business in California and the City of Porterville. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or

application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. Once your proposal is submitted, the Proposal is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

Tax Indemnification

Contractor shall, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including sales and use taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

Tax Responsibility Qualifications

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of California for any License or Sales taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in California statutes relative to State Sales and Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the California State Department of Revenue to release tax information relative to California Sales and Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

Russia Sanctions

Executive Order N-6-22 – Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, which shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

Mitigation of Heat-Related Illnesses and Injuries in the Workplace

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to

prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

- Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.
- Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- Access to shaded areas and/or air conditioning.
- Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
- Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
- Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures, and how to report heat illness and injury to emergency medical personnel.

The Contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Contractor to ensure compliance by its subcontractors.

Section III – Special Terms and Conditions

Term of Contract and Option To Extend

The Contract shall commence on the date both the City and Contractor execute the Agreement (“Contract’s start date”), and end when the City Council accepts the project as completed (“Contract’s end date”).

Post Award Conference

A post award conference may be held by the City prior to commencement of any work. Contractor will be required to attend. The purpose of this conference would be to discuss critical elements of the work schedule, operational problems, the transition plan and procedures.

Estimated Quantities

Quantities listed are the City’s best estimate and do not obligate the City to order or accept more than City’s actual requirements during the period of this Contract, as determined by actual needs. It is expressly understood and agreed that the Contract is to supply the City with its complete actual requirement for the Contract period.

Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the City Council prior to the institution of the change

Alteration In Character Of Work

No changes in the scope, character, or complexity of work may be made by Contractor without first receiving approval by contract amendment properly defining and limiting the change. The City will not pay any claim for extra work done or materials furnished by Contractor except as provided in this Contract, and Contractor may not do any work or furnish any materials not covered by this Contract unless first approved by the City through contract amendment. Any such work or materials furnished by Contractor without prior contract amendment is Contractor’s sole risk, cost, and expense, and Contractor may not make any claim for compensation for any such work or materials.

Method Of Invoicing And Payment

The CITY will compensate Contractor for satisfactory and complete performance of work under the Contract at the prices set forth in the Contract, with no additional charges for equipment, supplies, overhead, travel or administrative support.

Contractor shall be paid monthly in arrears. On or before the 10th day of each calendar month, Contractor shall submit one (1) invoice to the City for services provided during the previous month and each invoice shall contain the date, contract number, supporting documentation, and invoice amount. Advance payments are not authorized. Payment may only be made for actual goods and/or services that have been received, less liquidated damages.

The invoice must contain the associated purchase order number on the invoice itself and must be free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the City will return the invoice to Contractor. Contractor shall promptly resubmit the revised invoice to the City. Failure to identify an error does not waive any of the City's rights. The City shall make every effort to process payment for the purchase of services within 45 calendar days after receipt and approval of a correct invoice.

Any prompt payment discounts offered must be clearly noted by Contractor on all invoices submitted to the City. Monthly invoice must be sent for review to the City's Project Manager. The City shall notify the Contractor if the invoice has been approved or if it requires additional documentation and/or correction.

Following invoice approval, Contractor will email the invoice in PDF format to ap@ci.porterville.ca.us, copying the City's Project Manager. Each PDF attachment will contain only one invoice, although multiple PDFs may accompany an email. The email will be in plain text format free of any signatures or images (jpeg, bmp, etc.).

A "remit to" address must also be on the invoice and must match the address on file with the City. Any changes to the remit to address must be updated by the vendor.

Key Personnel

Contractor shall maintain the Key Personnel identified in its proposal for a minimum of 24 months from the "Effective Date" of contract award by City Council unless they are no longer employed by Contractor. Contractor shall notify the City in writing prior to removing, reassigning, or appointing an individual from or to any Key Personnel position whether in an acting or permanent capacity. For all Key Personnel, Contractor shall fill vacancies with City approval within 45 calendar days of the vacancy, unless otherwise approved by the City in writing. All of Contractor's Key Personnel shall be assigned full-time (a minimum of 40 hours per week) to this project, unless otherwise approved in writing by the City. In the event one or more of Contractor's Key Personnel is permanently replaced, Contractor shall notify the City in writing at least 72 hours prior to the replacement date and time. The replacement personnel shall be subject to the City's prior approval in writing.

Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

Performance Interference

Contractor shall notify the City's Project Manager immediately of any occurrence and/or condition that threatens to interfere with the full performance of the contract and confirm it in writing within 24 hours.

Unsatisfactory Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the Scope of Work, or elsewhere in this Contract. The City shall decide all questions as to the quality and acceptability of any work performed under the Contract as monitored and documented by the City. If, in the opinion of the City, performance becomes unsatisfactory, the City shall notify Contractor. Contractor shall have a reasonable time to cure the unsatisfactory performance.

If the unsatisfactory performance is not cured within the time specified, the City may immediately correct or complete the work to its satisfaction and deduct the associated costs from any balances due or to become due to Contractor. Contractor will be liable for difference between cost to the City to complete the Work with other forces and the cost to the City for completion of the Work by Contractor per the contract. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

Employee Identification and Facility Access

Only authorized Contractor employees are allowed on the premises of City facilities. Contractor employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contractor or subcontractor employee.

Confidentiality

"Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the "Effective Date" of contract award by City Council, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential

Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Contract; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Contract; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Contract. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City's written request or expiration of this Contract, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Contract. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: fpc.gov/resources/glossary.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term “process,” “processing,” or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

When Contractor processes PII pursuant to the Contract, Contractor shall, at no additional cost to the City:

- (1) process PII only within the United States and only in accordance with the Contract and not for Contractor’s own purposes, including product research, product development, marketing, or commercial data mining, even if the City’s data has been aggregated, anonymized, or pseudonymized;
- (2) implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice. (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
- (3) not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
- (4) as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
- (5) take reasonable steps to ensure the competence and reliability of Contractor’s personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;

(6) maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Contract and applicable laws;

(7) allow the City or its authorized agents to conduct audit inspection during the term of the Contract, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section.

If Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Contract, Contractor shall notify the City without undue delay within 48 hours; and:

(1) provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

(2) take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

(3) cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

(4) not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available

to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- (1) require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information;
- (2) act on newly acquired information whether or not such information should have been previously discovered;
- (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- (4) object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Contract. Contractor will bear the costs of all inquiries requested by the City.

Contacts With Third Parties

Contractor or its subcontractors shall not contact third parties to provide any information in connection with the deliverables provided under this Contract without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Contract or any other prior or existing contract with the City, Contractor or its subcontractors shall promptly inform the City, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section shall survive the termination of this Contract.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

No Third Party Beneficiaries

The parties expressly agree that this Contract is not intended by any of its provisions to create any right of the public or any member thereof as a third-party beneficiary nor to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

Non-Disclosure

Contractor shall not disclose, without the City's prior written consent, any information in the performance of the Services under this Contract to any person, firm, corporation, association, or other entity other than persons in the City's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall Contractor make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation, or other entity, except the City.

Contractor agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by Contractor's relationship with the City. Contractor further represents to the City that, as an inducement to enter this Contract, Contractor will hold this information in trust and confidence for the City's sole benefit and use.

Further, there shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City.

Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Contract, then, and in that event, upon written demand, Contractor shall relinquish to the possession and control of the City its entire file related to this Contract and only those portions of said file deemed by the City to be not privileged shall be returned to Contractor pending the resolution of the existing or anticipated litigation.

Contractor agrees that the requirements of this Section shall be incorporated into any subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Contract or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Contract shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

Accrued Liabilities

Contractor shall be responsible for the payment of all liabilities to its employees accrued during the contract term, including but not limited to accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between Contractor and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by Contractor at the end of the contract term and no additional

compensation shall be provided by the City for such accrued liabilities. Contractor shall not have any obligation for the liabilities of the prior contractor to its employees.

Claims or Demands Against The City

Contractor acknowledges and accepts the provisions of the Charter of the City of Porterville pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in the Charter of the City of Porterville alters, amends or modifies the supplemental and complementary requirements of the State of California Notice of Claim statutes pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

Moreover, nothing in this Contract will constitute a dispute resolution process, an administrative claims process, or contractual term sufficient to affect the date on which the cause of action accrues.

Conflicts of Interest

Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Contract upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Porterville City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Contract without liability, including any such commission, percentage, brokerage or contingent fee.

The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Contract, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Contract, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in a California court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

Section IV – Insurance and Indemnification

Standard General Defense and Indemnification

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Porterville and its officers, officials (elected or appointed), agents, and employees (“Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnatee harmless for any Losses arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnatee accrues immediately at the time a claim is threatened or a claim is made against Indemnatee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnatee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnatee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnatee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Porterville. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

Contractor’s Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this Section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors and Contractor may purchase such additional insurance as they determined necessary.

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

Commercial General Liability – Occurrence Form

General Aggregate - \$1,000,000

Products – Completed Operations Aggregate - \$1,000,000

Personal and Advertising Injury - \$1,000,000

Fire Damage - \$1,000,000

Each Occurrence - \$1,000,000

The policy must name the City of Porterville as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.

There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Porterville as an additional insured.

City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.

The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

UM/UIM Per Person Limit \$1,000,000

UM/UIM Per Accident Limit \$1,000,000

- The policy must be endorsed to include the City of Porterville as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Worker's Compensation and Employers' Liability

Workers' Compensation

Employers' Liability: Statutory

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Porterville.
- This requirement does not apply when a contractor or subcontractor is exempt, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

Property Insurance – Contractor’s Property and Equipment

Contractor must maintain all risk property insurance for Contractor’s personal property. The CITY will have no responsibility for any damage to Contractor’s personal property and Contractor’s property insurance must be endorsed to include a waiver of subrogation against the CITY.

Additional Insurance Requirements

Policies must include, or be endorsed to include, the following provisions:

- 1) On insurance policies where the City of Porterville is named as an additional insured, the City of Porterville must be an additional insured to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by Contract.
- 2) Contractor’s insurance coverage or self-insurance must be primary insurance and non-contributory with respect to all other available sources.
- 3) Coverage provided by Contractor must not be limited to the liability assumed under the indemnification provisions of the Contract.

Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Porterville.

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of California and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be mailed, emailed, or hand delivered to City of Porterville.

Section V - SCOPE OF WORK

The scope of work set forth in this Request for Proposals represents an outline of the goods and services which the CITY anticipates the successful Proposer to perform, and is presented for the primary purpose of allowing the CITY to compare proposals. The precise scope of work to be incorporated into the General Services Agreement shall be negotiated between the City and the successful Proposer. **The CITY requests that the Proposer suggest changes to the scope of work (as a part of the proposal) in order to achieve the CITY's Project Objectives.**

Background

The City of Porterville's Fuel Management System operates multiple fueling sites, bus wash, and gates for its fleet of approximately 300 vehicles and equipment. The fueling sites are located at the 555 N. Prospect Street, Porterville, CA 93257 and 1893 Newcomb St., Porterville, CA 93257.

City Corporation Yard (555 N. Prospect St., Porterville, CA 93257)

The main fueling site (private) is located at the City Corporation Yard and has two 20,000 gallon in-ground tanks one for diesel and one for gasoline. The fuel is dispensed from two fuel islands, each with two fast fill single-hose dispensers for diesel and two for gasoline. There is a single controller for the fuel islands (Pictures Below)



The second fueling site (public) has a standalone controller and one fast fill two-hose Compressed Natural Gas (CNG) dispenser. The standalone controller is setup for payment and authorizations. (Pictures Below)



The bus wash system is controlled by a single controller. (Picture Below).



Two entrance gates are each controlled by standalone controllers. (Picture Below)



The main fuel station, with in-ground tanks, is monitored by a Veeder-Root TLS-350 automatic tank gauge. (Picture Below)



Data is collected using mag-strip cards with manual entry for utilization. All data is stored on a City computer and is integrated into the City's Fleet Maintenance Software, RTA.

Porterville Airport (1893 Newcomb St., Porterville, CA 93257)

The Porterville Airport fueling site (public) has two 20,000 gallon in-ground tanks one for JetA and one for AVGAS. The fuel is dispensed from a single fuel island, one fast fill single-hose dispenser for JetA and one dispenser for AVGAS. There is a single site controller and Veeder-Root for the fuel site (Pictures Below)



General Scope of Work

Proposer shall provide all necessary equipment, software/licensing, data plans, and labor required to perform a turnkey Fuel Management System Upgrade at each fueling site. The primary goals of this project are to:

1. Reduce labor managing legacy mag-strip cards.
2. Reduce dependency on local computer hardware to run fuel management system.
3. Improve real-time monitoring of equipment.
4. Improve customer service for public and private users.

5. Improve reliability of fuel management system and equipment.
6. Improve operations by integrating technology.
7. Replace outdated or end-of-life equipment.

The objectives in meeting the primary goals are to:

1. Replace existing dispensers with next-generation commercial equipment.
2. Replace existing site controllers with next-generation commercial equipment.
3. Replace legacy fuel management system with next-generation cloud-based software.
4. Utilize automated and contactless payment/authorization whenever possible.
5. Offer fleet card features for self-service operations.

The City is seeking a fuel management system that requires no human intervention in the authorization of fueling and data collection. The system must also be able to work simultaneously with a wide range of authorization and secure payment methods. In addition to the fuel management system, the selected vendor must replace all out dated equipment, including but not limited to dispensers, site controllers, and tank monitoring.

A full list of bid specifications is provided in **Attachment 1**.

Proposal Format

Proposals should be clear, concise, and provide detailed information concerning the Proposer's ability to successfully perform the obligations as described in the Scope of Work. All Proposals shall include the following documentation in the proposal package:

1. Cover Letter
 - a. Cover letter shall introduce the Proposer and establish interest in providing a turnkey Fuel System Upgrades that meet the requirements of the City.
 - i. An individual duly authorized to commit resources on behalf of the Proposer must sign the letter.
2. Experience Statement
 - a. Indicate how many years of experience Proposer has in providing and the installation of fuel system equipment.
3. Describe procedures in place to provide assurances that fuel system upgrades will meet the needs of the intended use for the City.
4. Provide a list of at least three (3) references, current or past customers; including company name, address, contact name, phone number, current email address that have purchased units similar to the City's request.
5. Provide a contract price proposal
6. Provide an estimated project schedule
7. Complete and submit all required forms

Project Restrictions

- A. Time is of the essence for the project. The Proposer shall complete the specified work within ninety (90) working days from the date of execution of the Agreement.
- B. The City hours of operation are from 6:00 a.m. to 5:00 p.m., Monday to Friday. The Proposer may work outside of these hours with prior approval from the City. No request to work outside operating hours will be unreasonably denied.
- C. Proposer is expected to provide a price proposal and detailed budget to complete all work detailed in the scope of work. All fees for elements contained in this scope of work should be included in the proposal. A total proposed “Not to Exceed” Fee for goods and services, including a Fee Schedule describing all charges and hourly rates for services shall be negotiated between the CITY and Proposer for this project.
- D. Proposer is required to obtain a CITY Business License and must be registered to do business in California with the Secretary of State.
- E. Proposer is required to obtain all necessary permits, certifications, testing, and authority to construct and permit to operate from the San Joaquin APCD.

Section VI – Federal Transit Administration (FTA) Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the

clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention**. Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period**. Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records**. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance**. Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; (b) exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (d) federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
6. Equal Employment Opportunity for Construction Activities. When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the

preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.
- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.
- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall

continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.

- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381);
- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-

loading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working

conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee,

social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or

other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.
- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S.

Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.

- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.
- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then

FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility**. Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements**. Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver’s License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use**. Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving**. Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug

Use in Transit Operations” (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.

- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: (A) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (B) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; (C) telecommunications or video surveillance services provided by such entities or using such equipment; and (D) 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (b) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. Environmental Justice. Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental

Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order Nos. 11988 and 13690 relating to “Floodplain Management.”
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R. part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an

- academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by

the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.

G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C.

§ 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

The Proposer acknowledges it has received and read the following Addenda:

Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form B

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☐ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF CALIFORNIA

COUNTY OF _____

_____ declares and says:

1. That he/she is the (owner, partner, representative, or agent) of _____, hereinafter referred to as (CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form E

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form F

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form G

ACKNOWLEDGEMENT OF “BEST VALUE” SELECTION PROCESS

PROPOSER hereby acknowledges that the selection process under this RFP will evaluate Proposals on a “Best Value” basis, which the Federal Transit Administration’s (FTA) Best Practices Manual defines as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

As a result, PROPOSER further acknowledges that pricing will not be the sole basis upon which Proposals are evaluated.

An individual authorized to bind the PROPOSER to this Agreement must sign below acknowledging and understanding of the foregoing.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Exhibit B – Sample General Services Agreement

CITY OF PORTERVILLE GENERAL SERVICES AGREEMENT WITH *[insert full name of Contractor and Project Name and/or number]*

This General Services Agreement (Agreement) is entered into between the City of Porterville, a municipal corporation (**City**), and _____ [complete name of legal business entity], a _____ [business status, such as a California corporation] (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain Contractor to complete a XXXXXXXXXX Project (Project); and
- B. On XXXXXXXX, the City issued a Request for Proposals (RFP) for the XXXXXXXXXX (Project). On XXXXXXXX, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the goods and services.
- C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. _____-2024 approved by the Porterville City Council on _____, 2024.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall provide the goods and services required to complete the Project, described in Exhibit “A” attached hereto and incorporated herein by reference. The goods and services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: _____. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractor or subcontractor, without City’s prior written consent. The City may terminate this Agreement if Contractor makes any such change or replacement, or uses any unapproved subcontractor or subcontractor.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all

requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1. Term. The Term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6.

3. Compensation. City shall pay Contractor on a lump sum basis, at the billing rate set forth in Exhibit "C", attached hereto and incorporated herein by this reference for goods and services performed under this Agreement.

3.1. Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$ _____. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval. Notwithstanding anything contained herein to the contrary, the payment of any funds under this Agreement shall be subject to the City of Porterville's appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

3.2. Invoices. Contractor shall submit monthly invoice(s) to the City that describe the goods and services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Contractor.

3.3. Payment. Subject to the City acceptance of the Services as discussed in Exhibit A attached hereto and completion of the Project to the City's satisfaction, within 30 days after the City's receipt of invoice(s), City shall make payment to the Contractor based upon the services described on the invoice(s).

3.4. The acceptance by Contractor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Contractor for anything completed, finished or relating to Contractor's services. Contractor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Contractor or its employees, subcontractors, agents and subcontractors for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Contractor, its employees, subcontractors, agents and subcontractors.

3.5. Contractor agrees to maintain books, accounts, payroll records and other information relating to the performance of Contractor's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Contractor in the

performance of Contractor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

- 4. Indemnification.** Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In the event there is a finding and/or determination that Contractor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Contractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any all claims relating to or in connection with such a finding and/or determination.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

Contractor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

- 1. Insurance.** Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representative, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 1.1. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

- 1.2. Automobile Liability** (with coverage at least as broad as ISO CA 00 01 07 097, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 1.3. Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 1.4. Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.
- 1.5. Endorsements.** Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 1.5.1.** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 1.5.2.** For any claims related to this Agreement, Contractor’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor’s insurance and shall not contribute with it.
- 1.6. Notice of Cancellation.** Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.
- 1.7. Authorized Insurers.** All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 1.8. Insurance Certificate.** Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.
- 1.9. Substitute Certificates.** Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 1.10. Contractor’s Obligation.** Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

2. **Termination.** The City may terminate this Agreement in its sole and absolute discretion by giving ten (10) days' written notice to Contractor. Within five (5) days of such a termination, Contractor shall give the City all original documents relating to the Services in Contractor's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Contractor pursuant to this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
3. **Dispute Resolution.** If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:
 - 3.1. Each Party shall designate a senior management or executive level representative to negotiate the dispute.
 - 3.2. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority,
 - 3.3. If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 3.4. The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person to serve as the mediator, shall be commenced within thirty (30) days of selection of a mediator, and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 3.5. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 3.6. The dispute resolution process is a material condition of this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.
4. **Labor Code Compliance.** Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

5. **Rates.** These prevailing wage rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.
6. **Registration with DIR.** Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5
7. **Monitoring.** This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.
8. **Ownership of Work.** All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's Services, upon termination of this Agreement, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.
9. **Independent Contractor Status.** Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.
10. **Conflicts of Interest.** Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.
11. **Rebates, Kickbacks, or Other Unlawful Consideration.** Contractor warrants this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
12. **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after

the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Porterville
Transportation Department
291 N. Main Street
Porterville, CA 93257

To Contractor

13. Miscellaneous

13.1. Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13.2. Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

13.4. Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's prior written consent. Any attempt to do so will void. City's consent to one assignment, transfer or delegation shall not be deemed to be consent to any subsequent assignment, transfer or delegation.

13.5. Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Tulare.

13.6. Compliance with Law. Contractor shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

13.6.1. Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

13.6.2. Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, color, national origin,

handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.)

- 13.7. Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.
- 13.8. Business License.** Before the City signs this Agreement, Contractor shall obtain a City of Porterville Business License. Contractor shall maintain an active City of Porterville Business License during the term of this Agreement.
- 13.9. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 13.10. Construction of Agreement.** Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.
- 13.11. Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 13.12. Controlling Provisions.** In the case of any conflict between the terms of this Agreement and Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.
- 13.13. Entire Agreement.** This Agreement and the Attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.
- 13.14. Counterparts.** City and Contractor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.
- 13.15. Expenses for Enforcement.** Contractor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

14. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

The Parties agree to the full performance of these terms set forth here.

City of Porterville
291 N. Main Street
Porterville, CA 93257

Contractor

By: Martha A. Flores

By: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Federal Employer Tax ID No. _____

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No.XXX XXXXXXXXXXXXX
- B. Contractor Proposal
- C. Compensation

Attachment 1

Fleet and Fuel Management Technical Specifications

1.0 General Requirements	Comply	Comments
System manufacturer must have a minimum of ten (10) years' experience in the design and manufacture of fuel management equipment.		
The proposed system must conform to ISO 9001:2000 standards for quality management systems.		
System shall be ETL listed and approved for electrical, fire, and mechanical safety.		
The system must be expandable for future expansions in the number of fuel sites, vehicles, drivers, dispensers and nozzles.		
2.0 Fueling Procedure		
The system shall allow automated and manual fueling.		
In the fully automated mode, all control, authorization and accounting operations will be conducted automatically by the fuel management system with no manual input required by the operator using the fuel		

facility. The automated fueling procedure shall be as follows:		
The system shall automatically identify the vehicle when the fuel nozzle is inserted into the vehicle's fuel inlet.		
The system shall turn on the corresponding fuel dispenser only if the vehicle is authorized for fueling as determined by the site controller set of conditions as described hereafter.		
The system shall automatically suspend fueling if the nozzle is removed from the vehicle fuel inlet or no pulses are detected from the fueling pump.		
The system shall append to the same transaction if the nozzle is re-inserted into the same vehicle within a specified period of time. The transaction shall be terminated if the specified period of time elapses or if the dispenser is turned off.		
When vehicle data modules are installed, the controller shall store the fuel transactions, odometer reading and engine hour.		
The system shall also have the capability to capture other vehicle data such as idle time, speeding, distance, PTO, up to two auxiliary engine hour timers, and other On-Board Diagnostic (OBD) vehicle error codes into a		

centralized management and reporting system.		
In manual fueling, a contactless tag or card with no moving parts shall be available as alternative method for initiating a fueling transaction.		
A two-stage authorization process shall be provided by identifying both the vehicle and the driver prior to refueling. Both driver and vehicles IDs should be stored in the transaction. The two-stage authorization process should be flexible enough to link the vehicle device either to a specific driver or to a list of drivers.		
3.0 System Description		
<u>3.1 System Configuration</u>		
The site controller shall be a stand-alone unit comprising all required peripherals including the central processing unit, display panel, pump control module, communication modules, and optional receipt printer.		
The site controller shall be web enabled to allow independent real-time control, monitoring and reporting via the web using user ID with password and SSL protected link (https://).		
In the automated mode, the passive fuel ring or passive tag installed around the fuel inlet		

on the vehicle shall be used for automated fuel authorization.		
The site controller shall have a wireless access point communicate to all forecourt devices including the nozzle readers and vehicle data modules.		
The nozzle readers shall communicate with the passive fuel ring or passive tag for fuel authorization.		
The wireless access point shall communicate with wireless vehicle data module to retrieve data such as odometer reading, engine hours, fault codes, and idle time at a minimum.		
The site controller shall communicate with a secure multi-tenant Cloud Hosted Software for the purpose of centralized control and monitoring of multiple sites.		
Must be capable of handling several hundred sites.		
Refueling shall take place regardless of the connectivity to the Cloud Software.		
Refueling limits and restrictions shall be 'pushed' from the Cloud Hosted Software to all fuel site controllers enabling off-line refueling with limits and restrictions also when communication is not available.		

<u>3.2 System Operation</u>		
Upon insertion of the nozzle into the vehicle fuel inlet the nozzle reader device shall communicate with the passive fuel ring, retrieve data for fuel authorization, and transmit the data to the wireless access point.		
If the vehicle has a vehicle data module installed, the wireless access point shall detect the vehicle at the fuel site and retrieve data such as an odometer reading, engine hours, fault codes, and idle time from the vehicle data module.		
The wireless access point shall append the passive fuel ring or passive tag to the vehicle module data and transfer it to the site controller.		
The site controller shall authenticate the data retrieved from the vehicle and check it against the existing set of limits and restrictions. If all conditions are met, the site controller shall authorize immediate refueling.		
If the nozzle is removed during the refueling process, the nozzle reader device shall detect the removal and shall send an indication through the wireless access point to suspend refueling. When the nozzle is reinserted within a specified (configurable) period of time, refueling shall resume.		

At the end of the refueling process, the nozzle is reinserted into the dispenser cradle and the transaction data is sent from the site controller to the Cloud Hosted Software.		
Vehicle not installed with passive fuel ring or passive tag shall have the possibility to use manual authorizing devices including contactless cards or tags.		
4.0 Site Controller		
<u>4.1 General</u>		
The site controller shall control up to 8 mechanicals and / or 48 electronic hoses in one terminal.		
The site controller shall store up to 25,000 transactions and 50,000 vehicles/devices with the ability to set limitations and restrictions.		
The site controller shall be available for refueling 24/7.		
Site controller shall work in online and off-line modes, in case of communication failures with the Cloud Hosted Software. When communication is established again, the system shall synchronize data automatically.		

The site controller shall have an embedded hardware platform designed to survive the harsh fueling depot environment.		
The site controller shall use a solid-state Flash disk and RTC (Real Time Clock) with back up, along with surge suppressors for transient and noise immunity.		
The system shall include a power fail recovery mechanism. The CPU shall have no edge connectors and no hard disk (no moving parts).		
The site controller shall have a high-level data protection through two separate isolated TCP/IP Ethernet network ports. One port shall be used for site peripherals interface and the second port for external communication to the network (Remote access, Cloud Hosted Software and 3rd party systems) protected by SSL security.		
The site controller shall have the following additional capabilities:		
Secured remote capabilities for monitoring, management and maintenance activities		
Flexible with all types of communication including TCP/IP, wireless Ethernet bridge modems, and cellular communications.		
Web enabled reporting and alarms for Tank Level Sensing		

(TLS) systems (Veeder Root-350 and VR-450 protocols)		
Fuel management software for reconciliation reports		
Accessible via Internet browser to control and monitor the system. No requirement to install dedicated software.		
Real time web-based dynamic graphical monitoring and control of dispensers		
Remotely open a pump and limit the quantity to a specific transaction		
Able to update fuel price at a specific time		
Remote maintenance, remote troubleshoot and remote software upgrades of the various components of the system		
The following physical, electrical and environmental specifications shall be provided:		
Supply voltage: 100 – 240 VAC		
Power consumption: 2A max.		
Operating temperature without printer: -40 F to +149 F (-40 C to +65 C)		
Operating temperature with printer: -40 F to +140 F (-40 C to +60 C)		
Communication interface: RS-485–9600 bps, Half-Duplex, RS-232, Ethernet RJ-45-10 Mbps, EIA 802.15.4		
<u>4.2 Tank Level Sensing (TLS) Interface</u>		

The site controller shall support Veeder Root TLS 350 and Veeder Root TLS 450 protocols		
The TLS will be connected to the site controller via TCP/IP communication port or the RS-232 port to allow fuel management capabilities.		
The site controller shall have the possibility to define the following communication parameters; Baud rate, Parity, Data bit, Stop bit, and Flow control.		
The site controller shall collect the following data from TLS equipment:		
• 12:00 midnight shift inventory volume for tanks		
• Tank inventory level; CSLD (Leak Detection) status – Pass/Fail		
• Fuel delivery information; Water Level		
• Water levels, Temperature, Alarms (Leak, Overfill, Sump, Sensor, etc)		
• Alarms shall flash continuously on the main screen and could be sent via email		
<u>4.3 The Pedestal</u>		
The pedestal shall be a slim powder coated metal designed for easy installation and service with a painted stainless-steel base option. The paint application for the entire		

pedestal terminal shall consist of a positive/negative charged ionization process for superior bonding. All materials shall be tested to sustain Oil, Fuel, Sun, Water and Salt.		
There shall be 4 pedestal options:		
Standard with dimensions of 11.5" (29.2cm) x 11.8" (30 cm) x 62.2" (158 cm) tall		
ADA: 11.5" (29.2cm) x 11.8" (30 cm) x 50" (128 cm) tall		
Stainless Standard: Same dimensions as the standard and painted to match the head.		
Stainless ADA: same dimensions as the ADA and painted to match the head		
The pedestal shall allow front door access for maintenance and wiring and shall enable flexible installation on the fueling island.		
The pedestal display panel shall consist of:		
Illumination for keyboard and display		
Multimedia Color Display		
Full Alphanumeric Vandal Proof Keyboard		
Contactless Card/Tag Reader		
Wireless access point for use with passive fuel ring or passive tag for wireless vehicle identification (optional)		
Horizontal Magnetic Card Reader (optional)		
HID Reader (optional)		

<u>4.4 Receipt Printer (optional)</u>		
Optional outdoor receipt printer with 40m x 57mm paper roll including automatic paper cutter and alarms indicating low-paper and paper-out (alarms shall be available via email and displayed online with secured access)		
<u>4.5 Site Controller Software</u>		
The system shall be based on web server technology and enable easy secured (SSL) remote access through the network using a standard PC with an internet browser, without the need for any other software application.		
The browser interface shall allow control and monitoring, maintenance activities, report generation with advanced filters and templates, graphical monitoring of fuel levels, on-line pump monitoring, and more.		
The site controller shall support mechanical and electronic dispensers. All links shall be protected and isolated for maximum reliability.		
The system shall store transaction data as well as driver and vehicle records into its database using FLASH disk. Other critical data such as fueling limits and restrictions shall also be stored in the database.		

The system shall have the ability to use the following authorization devices:		
• Passive fuel rings or passive tags		
• Wireless Vehicle data modules		
• Contactless cards or tags		
• Mag. Cards (track 2 and 3)		
• Keyboard entry authorization		
• Optional HID reader		
Authorization schemes shall include the following scenarios:		
• Single device authorization		
• Two stage authorization (based on two authorization devices)		
• Add-on keyboard entries: PIN code, vehicle ID, odometer reading, engine hours, and or job code.		
The system shall have the option to collect data from driver before refueling, such as: PIN, Odometer, vehicle ID, etc.		
The system shall provide odometer reasonability checks for data accuracy.		
The site controller shall allow the possibility to work offline with all limits and restrictions		
System shall have the option to approve or decline refueling according to pre-defined limits and restrictions for the specific unit. Such limitations shall include:		

Limit of daily, weekly and monthly refueling volume or sales amount.		
Enable or disable vehicle refueling on specific days (weekdays for example) and/or specific time slots within a day (nighttime for example)		
Limit the maximum refueling sessions for a specific vehicle per day, week or month.		
Block specific stations for a specific vehicle (if vehicle is restricted for operation in a specific zone).		
Restriction of specific fuel types for refueling of a specific vehicle.		
5.0 Wireless access point		
The wireless access point shall be integrated into the site controller.		
The wireless access point shall retrieve data from the passive fuel ring or passive tag and the vehicle data modules.		
The wireless access point shall decrypt the protected data and send the complete vehicle information to the site controller using a TCP/IP Ethernet link.		
The wireless access point shall include two wireless channels (802.15.4) with two antennas that work simultaneously to overcome possible blocking of the RF or channel.		
The wireless access point shall communicate with the nozzle reader device and the vehicle		

data modules using a short range 2.4 GHz wireless communication.		
The wireless access point shall identify the vehicle at the fuel site.		
6.0 Nozzle reader device		
The nozzle reader device shall not have any wires		
The nozzle reader device shall read the data off the passive fuel ring or passive tag (mounted around or near the vehicle fuel inlet) and transmit the encrypted data over wireless link to the wireless access point.		
The nozzle reader device shall read the passive fuel ring or passive tag using contact-less technology with anti-spoofing mechanism to protect against cloning of vehicle devices (recording the pattern that is transmitted by a specific vehicle and creating a clone).		
The nozzle reader device shall transmit the encrypted fuel ring data to the wireless access point installed in the fuel island using a 2.4 GHz encrypted wireless network communication		
The nozzle reader device shall be a self-contained unit installed on the nozzle. No		

wires shall be connected to the nozzle reader device.		
The nozzle reader device shall have a customized design for most common nozzle types.		
Must have a version to fit high speed nozzles.		
The nozzle reader device shall fit onto existing fueling nozzles and cradles of most common dispensers.		
The nozzle reader device shall have a green LED light to indicate:		
• The nozzle reader device has detected a passive fuel ring or passive tag		
• The nozzle reader device is in operation		
7.0 Passive fuel ring or passive tag		
The passive fuel ring or passive tag shall be mounted around the vehicle fuel inlet.		
The passive fuel ring or passive tag encrypted data shall be read by the nozzle reader device using RFID contact-less technology.		
The passive fuel ring or passive tag shall be a low-cost device designed for vehicle identification and fuel transaction recording only.		

The fuel ring shall have the following characteristics:		
Does not require a hard-wire connection to vehicle module		
Passive transponder (No power source required)		
No wiring		
No RF interferences.		
Easy to install (No professional manpower shall be required)		
Install within a few minutes		
Available in various sizes to meet most vehicle requirements		
The passive fuel ring or passive tag shall have an anti-theft and tamper resistant if it is removed from the vehicle		
The passive fuel ring or passive tag shall have the following environmental specifications:		
Operating temperature range: -40C to +85C		
Bounce and vibration to meet automotive requirements		
8.0 Vehicle Data Modules		
The following vehicle data modules shall be available:		
<u>8.1 Vehicle data module for OBDII</u>		
Must be a plug-in vehicle data module for CANBUS protocol		

Software updates to the vehicle data bus modules shall be accomplished through the site controller.		
The vehicle module shall be capable to be installed on any vehicle type with an OBDII connector using CANBUS protocol.		
It shall also be able to connect to older vehicle which have vehicle speed sensor (VSS) for odometer reading and engine hour reading.		
The vehicle data bus modules shall be easily installed by non-technical personnel.		
<u>8.2 Vehicle data module for J1708 and J1939</u>		
The vehicle module shall be a miniature wireless device. The module shall be wired to the vehicle diagnostic connector (J1708 or J1939) or use a quick connect cable intended for heavy vehicles and trucks.		
It shall also be able to connect to older vehicle which have vehicle speed sensor (VSS) for odometer reading and engine hour reading.		
9.0 Vehicle Programmer		

Vehicle programmer should be wireless and used to program passive ring or passive tag and vehicle data modules.		
Vehicle programmer should be wireless for easy diagnostics of passive ring or passive tag and vehicle data modules.		
10.0 Cloud Hosted Software		
The Cloud Hosted Software must be modular in design. The intent is single sign on for all things fleet related.		
<u>10.1 General Information</u>		
The cloud software system must be modular in design.		
Ability to enroll and un-enroll in modules and features based on customer needs.		
The system shall be a cloud-based web server communicating with all sites to provide centralized data base and on-line network access for fleet managers, key personnel, and remote maintenance entities, providing 24/7 on-line access through the network.		
The cloud hosted software shall create and control several fleets and departments and support different privilege levels for limited access for different users (for example, a Fleet manager can only manage the Vehicles in		

his/her own Fleet).		
The cloud hosted software shall provide advanced on-line services for multiple sites and multiple fleets in a region.		
The cloud hosted software shall support multiple fuel sites/equipment and allow data consolidation.		
The cloud hosted software shall synchronize data with all sites in near real-time.		
The cloud hosted software shall provide secure log-in through the Web for each fleet manager, for monitoring & control and report generation including exception reports.		
The cloud hosted software application can interface to other applications via Web Services, import and export of files to FTP and ODBC standard.		
The cloud hosted software should have ability to show all fuel suppliers available in the US and allow you to select which ones can service our fuel locations.		
The cloud hosted software must have an optional, private cellular network to connect to devices such as inventory monitors, card readers, and other petroleum equipment.		
The cloud hosted software web interface		

shall use SSL security.		
Cloud hosted software shall be able to integrate with Active Directory SSO or similar application.		
<u>10.1.1 Fuel Site Module</u>		
Must have Fuel Control and Transaction Tracking.		
Must enhanced transaction reporting with ability to export data.		
.		
Must have ability to have a Fleet Fuel card acceptance – Local auth or networked.		
Must have Direct “live” connection to Card Reader from your desktop or mobile device.		
Must have the ability to create custom exports and data feeds to other back office software systems (Oracle, SAP, etc)		
Must have full inventory reconciliation with Bill of Lading and Veeder Root TLS deliveries.		
Must have direct “live” connection to Veeder Root TLS from your desktop or mobile device.		

Must have ability to capture and regenerate reports from the Veeder Root TLS such as but not limited to:		
Delivery Report, Leak test Results, leak test history, alarm sensor status, CSLD results, alarm history report.		
Must be able to integrate with Veeder-Root, Smart Tank, Centeron, Levelcon, and Numerex Tank Monitoring Systems.		
<u>10.1.2 Fuel Card Module</u>		
Must have embedded fleet fuel card offering inside the system so there is no need to sign on to multiple systems.		
Must aggregate all retail transactions into the software system to see both onsite and offsite transactions.		
Must allow scoping for users to only see specific departments data, including fuel cards, vehicles, drivers, and transactions		
Must be able to generate monthly invoices for retail purchases.		
Must be able to visually represent retail purchases relative to “home-based sites” and identify areas of unnecessary retail purchases.		

Must be able to identify exception reports for fleet managers including but not limited to transaction velocity, premium fuel purchases, zero odometer transactions, other purchases such as service and wash jobs.		
Must be able to consolidate retail reporting with onsite data from the fuel control system so there is no need merge multiple data sets.		
<u>10.1.3 Bulk Fuel Module</u>		
Fully integrated bulk fuel dispatch system that allows users to order fuel directly from the software system.		
Ability to identify possible red flags or billing discrepancies based on delivery data keyed in by users.		
Must have a digital document repository library of Invoices, BOL's, Driver Tickets, etc.		
Ability to connect with and manage various suppliers through a connected web of bulk fuel loading racks (Supplier Management).		
Fuel Supplier scorecard based on an index with rack average, published freight rates and other approved fuel suppliers pricing.		

Ability to benchmark supplier prices against a national standard such as DTN Rack Average + standard freight and margin.		
Ability to show market trends from real time data feed for all fuel racks in the US.		
<u>10.1.4 Fleet Maintenance Module</u>		
Must have the ability to create custom vehicle inspection forms.		
Must have the ability to be used on mobile or tablet view.		
Must have the ability to schedule inspections and PM's on set intervals for vehicles.		
Must have ability to assign technicians to vehicles and have all work automatically default to the correct Technician login page.		
Must have the ability to create technicians and allow technicians to login to restricted system for only their work.		
Must have the ability to enable a time clock feature with time tracking for technicians for payroll and productivity.		
Must have the ability to integrate with Telematics companies such as		

TeletracNavman, GeoTab, and Verizon Fleet.		
Must have the ability to create work orders and inspections for vehicles.		
Must have ability to add expense and service entries to vehicles.		
Must be able to calculate total cost per vehicle.		
Must be able to import parts list and assign parts during work orders.		
Must be able to generate “parts usage report” with custom date range.		
11.0 Service and Support		
Must have local distribution (within short driving distance to listed fuel sites) and manufacture certified technicians for installation and on-site service throughout the US.		
Must have project management team expertise with large national rollouts. Provide 3 references of rolling out hundreds of fuel sites.		

Must have 24-hour help desk support for software updates, troubleshooting, and training.		
12.0 Warranty		
Minimum of 12 months system Parts and Labor warranty.		
Be able to provide optional warranty up to 5 years.		



**CITY OF PORTERVILLE
CONTRACT ADDENDUM**

PROJECT TITLE: Fuel System Upgrades
RFP NO: RFP # 24/25-SR1978
ADDENDUM NO: 1
ISSUED: November 8, 2024

TO ALL BIDDERS,

Notice is hereby given that certain sections contained in the above referenced Contract Documents are amended, clarified, and/or deleted and are identified as Addendum No. 1 and attached hereto.

THEREFORE: All Bidders are required to note this Addendum No. 1, and all other Addendums, in the Acknowledgement of Addenda Page to be considered a responsible, responsive bidder.

Sincerely,
Richard Tree
Director of Transportation

Attachment

Attachment

PROPOSALS will be received by the Transportation Department, submitted through the Public Purchase website, until 2:00 P.M. on Tuesday, September 24, 2024, for the Contract to provide low carbon fuel standard (LCFS) services. **Proposals must be submitted through the Public Purchase website.**

A **mandatory site visit is REQUIRED** in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us.

All other terms and conditions remain unchanged.

END OF ADDENDUM No. 1

/s/ Richard Tree
Transportation Director

Note: This Addendum must be acknowledged in the Acknowledgement of Addenda page to be considered a Responsive bid.



**CITY OF PORTERVILLE
CONTRACT ADDENDUM**

PROJECT TITLE: Fuel System Upgrades

RFP NO: RFP # 24/25-SR1978

ADDENDUM NO: 2

ISSUED: September 12, 2024

TO ALL BIDDERS,

Notice is hereby given that certain sections contained in the above referenced Contract Documents are amended, clarified, and/or deleted and are identified as Addendum No. 2 and attached hereto.

THEREFORE: All Bidders are required to note this Addendum No. 2, and all other Addendums, in the Acknowledgement of Addenda Page to be considered a responsible, responsive bidder.

Sincerely,
Richard Tree
Director of Transportation

Attachment

Attachment

Questions & Answers

1. Dispenser Replacements; Can you confirm the only dispensers to be replaced are the (4) Unleaded & Diesel dispensers at City Corporation Yard and (1) AVGas & (1) Jet A at the Proterville Airport?

a. Yes, that is correct.

All other terms and conditions remain unchanged.

END OF ADDENDUM No. 2

/s/ Richard Tree
Transportation Director

Note: This Addendum must be acknowledged in the Acknowledgement of Addenda page to be considered a Responsive bid.



WESTERN
— PUMP —

3235 F STREET | SAN DIEGO, CA 92102
9215 ARROW ROUTE | RANCHO CUCAMONGA, CA 91730
1438 E. VAN BUREN | PHOENIX, AZ 85006
(888) 239-9988
westernpump.com

STATEMENT of QUALIFICATIONS

FUELING FACILITIES | VEHICLE MAINTENANCE & REPAIR FACILITIES | C-STORES

TABLE OF CONTENTS

OVERVIEW

EXECUTIVE SUMMARY	PAGE 3
CAPABILITIES	PAGE 4
General Construction Services	PAGE 5
Specialty Construction Services	PAGE 6
Compliance and Maintenance Services	PAGE 7
Equipment Distribution	PAGE 8
MANAGEMENT	PAGE 9
ORGANIZATION	PAGE 10
DOEHRMAN, A WESTERN PUMP COMPANY	PAGE 11
DOEHRMAN SERVICES	PAGE 12

KEY PERSONNEL

Resume - Ryan Rethmeier, President	PAGE 13
Resume - Michael Mizicko, Vice President of Operations	PAGE 14
Resume - Ryan Shadburn, Vice President of Business Development	PAGE 15
Resume - Derek Rethmeier, Vice President/Pre Construction	PAGE 16
Resume - Daniel Miller, Construction Superintendent	PAGE 17
Resume - John Hendrick, Business Development	PAGE 18
Resume - Greg McLucas, Project Manager	PAGE 19
Resume - Matthew Bodde, Project Manager/Estimator	PAGE 20
Resume - Gregory Lambright, Architect/Engineer	PAGE 21

PROJECT EXPERIENCE

Relevant Project Experience - Twentynine Palms Marine Mart	PAGE 22
Relevant Project Experience - Love's #749 Westmorland, Ca	PAGE 23
Relevant Project Experience - Sycuan Market	PAGE 24
Relevant Project Experience - SDIA Rental Car Center	PAGE 25
Relevant Project Experience - USMC Camp Pendleton Design / Build Fuel Facilities	PAGE 26
Relevant Project Experience - Ocotillo Marine Mart	PAGE 27
Relevant Project Experience - Pilot Flying J Travel Center	PAGE 28
Relevant Project Experience - Chollas Creek Quaywall	PAGE 29
Relevant Project Experience - Deluxe Auto Carriers, Inc.	PAGE 30
Relevant Project Experience - Metro Division 13 Bus Maintenance Facility	PAGE 31
Relevant Project Experience - Brown Field Border Patrol Station	PAGE 32
Relevant Project Experience - Legoland Fuel Facility	PAGE 33
Relevant Project Experience - SeaWorld Maintenance Facility	PAGE 34
Relevant Project Experience - Love's Travel Stops & Country Store (Bliss, ID)	PAGE 35
Relevant Project Experience - QuickTrip 489	PAGE 36

EXECUTIVE SUMMARY

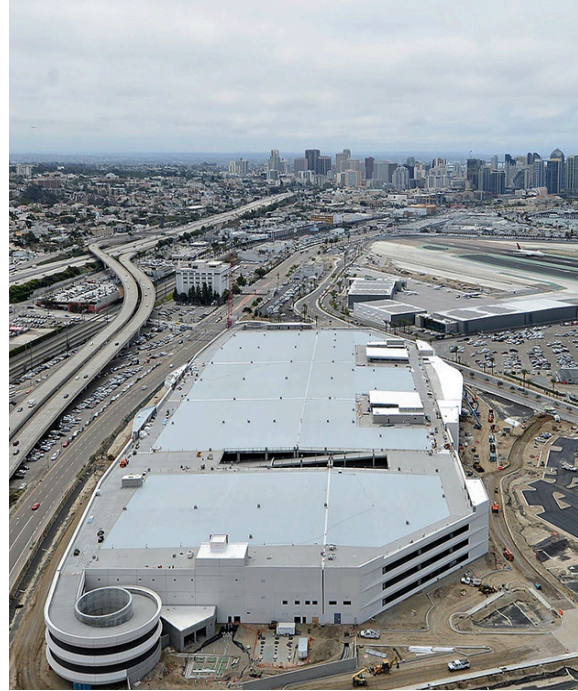
Western Pump is a general and specialty contractor serving the petroleum and transportation industries, and mission critical infrastructure. Over the past eight decades, Western Pump has built a reputation as a single-source solution. We complete quality projects on time and within budget while providing unsurpassed services. Our expert teams are equipped with the required resources to build cost-effective projects while meeting demanding schedules and limited budgets. Western Pump's staff of professionals has a proven track record for delivering quality, reliability, exceptional customer service, reduced downtime, and peace of mind.

We utilize state-of-the-art computer technologies in all areas of business, including estimating, project management, service management, fleet management, content and process management, workflow management, customer relationship management, computer-aided design, building information modeling, and more. These technologies, along with a dedicated team of professionals, are applied carefully toward the successful execution and completion of a wide variety of construction projects and service contracts.

Western Pump is highly selective regarding the type of projects and contracts that it undertakes. The substantial capabilities of the firm, coupled with the experienced technical and managerial skills of its staff, enable Western Pump to meet and exceed its clients' expectations. The combined goals and objectives of our clients are checked and balanced against our current workloads and resources - we will not take on projects or contracts unless we can deliver on our promise. Customer expectations, budgets, and schedule limitations are also taken into consideration. This approach ensures the highest quality of service, the timely completion of projects, and constant and focused response to our clients.

Western Pump is a full-service contractor for the petroleum, automotive, and transportation industries, specializing in the construction and service of all types of fueling facilities, convenience stores, and vehicle maintenance/repair facilities. Western Pump has provided construction and services to governmental agencies, private developers, major corporations, educational organizations, and to other general contracting firms. Western Pump has a demonstrated history of providing consistent, cost effective, and accurate service and performance with both private and public sector projects and contracts.

Through our experience, expertise, and resources, Western Pump can provide a wide array of services that fosters the growth, prosperity, and success of our clients.



CAPABILITIES

The Power and Resources to Get the Job Done

CONSTRUCTION

Western Pump provides a wide range of both specialty and general construction services, from short duration, self-performed heavy repairs to the complete, ground-up construction of a new facility requiring a team of subcontractors. No project is too small or too big. Our project management and execution teams have the experience and expertise necessary to execute the work on time and within budget.

SERVICE

Western Pump self-performs maintenance, repairs, and compliance services on fuel systems and vehicle maintenance equipment throughout Arizona and Southern and Central California. Over 50 ICC- and manufacturer-certified service technicians are dispatched out of three office locations (San Diego, Los Angeles, and Phoenix). These technicians carry a wide range of repair parts on the trucks to deliver the quickest possible repair times. Western Pump is one of the only service providers capable of effectively servicing a geographic territory spanning over 150,000 square miles. Our technicians perform everything from preventative/ routine maintenance services to emergency repairs, compliance testing, monthly inspections, and complex troubleshooting of mechanical, electrical, and electronics systems.

EQUIPMENT & PARTS SALES

Western Pump is a direct wholesale distributor for many product lines of petroleum, convenience store, automotive, and industrial equipment. We represent over 150 of the industry's best manufacturers. Our warehouses in San Diego, Los Angeles, and Phoenix carry over \$2M in inventory. Our parts and equipment sales team have in-depth product knowledge and are trained to help our clients identify and select the right equipment/parts for their application.

GROUND-UP CONSTRUCTION & REMODELS

- ✓ Service Stations
- ✓ Truck Stops
- ✓ C-Stores
- ✓ Commercial Fueling Facilities
- ✓ Mission Critical Facilities
- ✓ Vehicle Maintenance Facilities
- ✓ Marina Fuel Facilities
- ✓ Aircraft Refueling Facilities
- ✓ Bulk Terminals
- ✓ Auto Repair Shops
- ✓ Automobile Dealerships
- ✓ Quick Lubes
- ✓ Car Washes
- ✓ Compressed Natural Gas (CNG) Facilities

HEADQUARTERS – SAN DIEGO

3235 F Street San Diego, CA 92102

BRANCH OFFICE – LOS ANGELES

9215 Arrow Route | Rancho Cucamonga, CA 91730

BRANCH OFFICE - PHOENIX

1438 E. Van Buren, Phoenix, AZ 85006

CONTACT INFORMATION

Telephone: (619) 239-9988 Fax: (619) 239-9925
westernpump.com

DEPARTMENTS

CONSTRUCTION: ext. 213

SERVICE: ext. 205

PARTS: ext. 219

ESTIMATING: ext. 241

HUMAN RESOURCES: ext. 235

ACCOUNTING: ext. 212

SHIPPING/RECEIVING: ext. 233

HOURS of OPERATION

Monday - Friday

7:30am to 4:30pm

FEDERAL TAX ID:

33-0312706



WESTERN
— PUMP —

SERVICES

General Construction Services Offered

GENERAL CONSTRUCTION DELIVERY METHODS

CONSTRUCTION MANAGEMENT – We manage the process of estimating, bidding, contracting, and constructing a project according to the plans and specifications supplied by the owner. This allows us to offer the best value to the owner while minimizing the potential for adversarial positioning. We offer two types of delivery methods:

✓ Total construction cost plus a percent-of-total-cost fee, without a maximum cap: This is the preferred delivery method if the plans and specifications supplied by the owner are not complete or are in a state of flux.

✓ Total construction plus a percent-of-total-cost fee, with a maximum cap: This method should only be considered when the plans and specifications supplied by the owner are complete, with very little possibility of change.

INTEGRATED CONSTRUCTION MANAGEMENT – We assist with selecting an architect who is contracted to the owner; our management process then encompasses everything from initial design through the completion of construction. This method involves the owner more directly in the design and construction process. This process may also preferred over our Design/Build delivery plan (see below) due to the insurability/liability protection for the owner as well as the contractor.

DESIGN/BUILD – We manage the entire project from inception through design to construction completion. This differs from Integrated Construction Management in that the architect is contracted directly to Western Pump, so we assume total accountability for the design process as well as the construction process. This method traditionally minimizes owner involvement in the design and construction process. It is most suitable for those owners who prefer a complete turnkey process.

BID/BUILD – This type of project is the least preferred and should only be considered after careful study of the project documents. Not only is there greater financial risk, this type of project also tends to create a more adversarial relationship between the parties.

CONTRACTOR LICENSES

CALIFORNIA (#673853)

A – General Engineering Contractor

B – General Building Contractor

C-10 – Electrical Contractor

C-61 – Limited Specialty Classification

D-40 – Service Station Equipment and Maintenance

HAZ – Hazardous Substance Removal Certification

ARIZONA (ROC #333348 CR11, ROC #200394 CR5,
ROC #333393 B1)

NEVADA (#0057569) B4 – Service Stations

IDAHO (#RCE-52704)

MONTANA (#258330)

WASHINGTON (#WESTEP1797LJ)

BONDING

\$15,000,000 Single Project \$30,000,000 Aggregate

SURETY: Markel Surety / *SureTec Insurance Company* A.M Best rated A XV
and Treasury listed \$40,924,000

AGENT: Michael Strahan

KPS Insurance Services, Inc.

Telephone: (858) 538-8822

INSURANCE

General Liability (\$1M/\$2M), Automobile Liability (\$1M), Pollution Liability (\$1M),
Professional Liability (\$1M), Excess Liability (\$5M), Workers Compensation (\$1M),
Employers Liability (\$1M)

AGENT: Carmen Scoppettuolo

Wateridge Insurance Services

Telephone: (858) 200-3084



SERVICES

Specialty Construction Services Offered

CONSTRUCTION (Self-performed)

- ✓ Design /Engineering
- ✓ Permitting
- ✓ Demolition, Excavation, Trenching, and Shoring
- ✓ Tank Installation & Removals
- ✓ Piping System Fabrication & Installation
- ✓ Electrical Conduit & Wire Installation
- ✓ Concrete
- ✓ Fabrication & Welding
- ✓ Start-up & Initialization

VEHICLE SERVICE & GARAGE

EQUIPMENT INSTALLATION (Self-performed)

- ✓ Lubricant Pump Systems
- ✓ Fluid Inventory Control Systems
- ✓ Hose Reel Banks
- ✓ Piping Systems
- ✓ Compressed Air Systems
- ✓ Used/Waste Oil Evacuation Systems
- ✓ Light Duty Surface-mounted Vehicle Lifts
- ✓ Heavy Duty In-ground Vehicle Lifts
- ✓ Alignment Racks
- ✓ Wheel Service Equipment
- ✓ Tailpipe Exhaust Systems
- ✓ Car Washes
- ✓ Water Reclamation Systems
- ✓ Central Vacuum Systems
- ✓ Workbenches, Shelving, Parts Storage

PETROLEUM EQUIPMENT INSTALLATION (Self-performed)

- ✓ Underground Storage Tank (UST) Systems
- ✓ Aboveground Storage Tank (AST) Systems
- ✓ Fuel Dispensing Systems
- ✓ Submersible Pump Systems
- ✓ Piping Systems
- ✓ Secondary Containment Systems
- ✓ Tank & Continuous Monitoring Systems (AB-2481)
- ✓ Vapor Recovery Systems
- ✓ Fuel Management/Control Systems
- ✓ Fuel Island Canopy Structures
- ✓ Alternative Fuels Systems (E-85, Biodiesel)
- ✓ Diesel Exhaust Fluid (DEF) Systems
- ✓ Fuel Additive Systems
- ✓ Liquefied Petroleum Gas (LPG) Systems
- ✓ Fuel Oil Supply and Day Tank Systems
- ✓ Fuel Recirculating & Filtration Systems

ELECTRICAL INSTALLATION (Self-performed)

- ✓ Power Distribution & Control Systems
- ✓ Switchgear
- ✓ Conduits & Wiring Installation
- ✓ High and Low Voltage
- ✓ Explosion-proof (Class I, Division I & II)
- ✓ LED Lighting
- ✓ Electric Vehicle (EV) Charging Stations

ELECTRONICS (Self-performed)

- ✓ Point-of-Sale (POS) Systems
- ✓ Fuel Management & Control Systems

CLIENT LIST

SERVICE STATIONS

Costco Wholesale
United Pacific
Marine Corps Community Services
Navy Exchange Systems
Walmart/Sam's Club
Albertsons/Vons
Marathon/Speedway

Chevron
Thrifty Oil Company
Phillips 66
Sycuan Casino
Morongo Casino
Cahuilla Casino

TRUCK STOPS

Love's Truck Stops & Country Stores
Pilot Flying-J
Travel Centers of America (TA)
Red Earth Casino & Travel Center
Golden Acorn Casino Travel Center
Truck.Net

PRIVATE FLEETS

Anheuser-Busch
SeaWorld
Universal Studios
Paramount Pictures
Coachella Valley Water District
Walt Disney
Hawthorne Machinery

SERVICES

Compliance and Maintenance Services Offered

PETROLEUM

- ✓ Designated UST Operator (DUSTO) Inspections
- ✓ Annual Monitoring System Certifications
- ✓ Stage I & II Vapor Recovery Testing
- ✓ In-Station Diagnostics (ISD) Testing
- ✓ Tank & Line Integrity Testing
- ✓ Enhanced Leak Detection (ELD) Testing
- ✓ Meter Calibrations
- ✓ Fuel Polishing & Tank Cleaning

AUTOMOTIVE

- ✓ ALI-certified Vehicle Lift Inspections
- ✓ Compressed Air System Audits

Maintenance Services Offered

DELIVERY METHODS

- ✓ Time & Materials (T&M) / Break-fix
 - P1 Emergency 4-hour Response
 - P2 24-hour Response
 - P3 72-hour Response
 - Troubleshooting & Repair
- ✓ Scheduled Maintenance
- ✓ Fixed-Price Service Agreements (FPSAs)
- ✓ Preventative Maintenance (PM) Services
- ✓ Multiple Award Service Contracts (MASCs)
- ✓ Indefinite Delivery Indefinite Quantity (IDIQ)
- ✓ Dedicated Service Technician



CLIENT LIST

GENERAL CONTRACTORS

Austin Commercial
Sundt Construction
McCarthy Building Companies
Turner Construction
Clark Construction
Swinerton Builders
Soltek Pacific Construction
Bellingham Marine
Lusardi Construction
Tri-State General Contractors
Straub Construction
The Haskell Companies
Amoroso Construction
AECOM

OIL JOBBERS

Flyers Energy
SC Fuels
Western Refining & Marketing
SOCO Group
Dewitt Petroleum
Cosby Oil
Lee Escher Oil Company (LEOCO)
National Petroleum
Dion & Sons
Southern Counties Lubricants (SCL)
Beck Oil
Supreme Oil

HOSPITALS & CARE FACILITIES

JFK Memorial Hospital
St. Joseph's Hospitals
Children's Hospital of Orange County
VA Medical Centers
Scripps Memorial Hospitals
UCSD Medical Center
Desert Regional Medical Center

SERVICES

Equipment Distribution

EQUIPMENT SALES

Western Pump sells, installs, and services equipment from the following manufacturers:

PETROLEUM EQUIPMENT: Xerxes, Modern Welding, ConVault, Gilbarco, Veeder-Root, Red Jacket, Gasboy, Wayne, OPW, Blackmer, PetroVend, Civacon, Fibrelite, PMC, Bennett, Franklin Fueling Systems, FE Petro, Incon, Healy, EBW, Flex-ing, Phil-Tite, UPP, Omntec, Pneumercator, Vaporless, Bravo Systems, CNI, Emco Wheaton, Hirt Combustion, DPM, Western Fiberglass, BJ Enterprises, Brugg Pipesystems, Universal Valve, NOV, Containment Solutions, Rovanco, Nupi, OmegaFlex, Hosemaster, Syntech, EJ Ward, Multi-Force, VST, Husky, OPW, Morrison, PetroClear, Cim-Tek Filtration, Velcon, Groman-Rupp, Relevant Solutions, RCI Technologies, Fill-Rite, GPI, Highland, Pryco, Simplex, Cla-Val, Liquid Controls, Total Control Systems, Riverside Steel, Baker Industries, Granco, PT Coupling, PMP, Clay & Bailey, Dixon Pumps, Krueger Sentry, GIR, Scully, RDM

VEHICLE SERVICE & GARAGE EQUIPMENT: Rotary, Graco, Champion, Forward, Challenger, Direct-Lift, Mohawk, Maha, BendPak, Balcrank, Samson, Lincoln, Alemite, Ingersoll-Rand, Hannay, Devon, Reelcraft, Coxreels, Shure, Equipto, Burroughs, Rousseau, Swisstrax, Justrite, Hunter, GFS, Harvey, JohnDow, Duro, Ammco, Coats, Corgi, Accu-turn, Norco, Robinair, Mattei, Saylor Beall, CompAir, Ingersoll-Rand, Mi-T-M, Amflo, Belanger, NS Wash Systems, PurClean, PDQ, Unitec, Spencer Vacuum, JE Adams, Gray, Raasm

C-STORE EQUIPMENT: Royston, Lozier, Southern CaseArts, Anthony, Manitowoc, Hussman, True, DSA Signage, VeriFone, Gilbarco, Allied Electronics, Gasoline Advertising

ELECTRICAL & LED LIGHTING: LSI, Cree, Solid State Luminaires (SSL), Power Integrity, Carolina Products, Space Saver Distribution (SSDi), EVSE, e-Mobility

CLIENT LIST

MISSION CRITICAL

NAVFAC
US Army Corps of Engineers
Department of Homeland Security
Defense Logistics Agency (DLA)
USMC Camp Pendleton
USMC Miramar
MCLB Barstow
MCB Twentynine Palms
U.S. Navy Base San Diego
U.S. Navy Base Point Loma

COMMERCIAL FLEETS

San Diego International Airport
Los Angeles World Airports (LAWA)
San Diego Unified School District
Port of Long Beach
California Highway Patrol (CHP)
Penske Truck Leasing
LA Metro
San Diego Metropolitan Transit North County
Transit District (NCTD)
CalTrans

Federal Bureau of Investigation (FBI)
Sunline Transit Agency
Orange County Transit District
XPO Logistics
Riverside Transit Agency (RTA)
Osterkamp Trucking
Los Angeles Dept. of Water & Power
San Diego Gas & Electric (SDG&E)
Southern California Edison (SCE)

MANAGEMENT

The management and staff of Western Pump are results oriented and, as such, recognize the importance of clear, focused, and effective communications of ideas, strategies, concepts, and job status in a contractor-client relationship. Western Pump's management approach is to actively involve managers and accompanying teams in all technical and administrative aspects of the specific project, contract, or service, including all scheduling and task-completion duties.

CONSTRUCTION

Our project managers devote a major portion of their work effort toward the development, implementation, and completion of specific tasks. Project managers are also responsible for providing team leadership, security, and quality control; monitoring and review of project schedules and budgets; and maintaining a focused communications relationship with the client. As a result, project managers can represent our clients' best interests by minimizing and mitigating potential problems before they occur, exercising cost containment, reducing and eliminating delays, and identifying and exploring alternative procedures and opportunities.

All project activities and project costs are tracked and recorded weekly into Procore and our computerized database. Time sheets, indirect and direct costs, and budgets are linked to this database for total cost management. Project managers are thus able to respond to and monitor project costs and schedules within any given reporting period.

Western Pump's security and quality control measures and procedures ensure the confidentiality, accuracy, and preservation of all work efforts and data. All project data is backed up daily.

SERVICE

Because of the size of our work force and the geographic areas that we cover, it takes a team of professionals to supervise and direct the daily operations of our service division. Service managers and coordinators are intimately involved with the coordination, scheduling, and dispatching of technicians. Field technical supervisors also work diligently with our team to facilitate troubleshooting efforts, provide technical support, and make timely repairs for our clients.

All field service activities are tracked and recorded in real time through our JONAS Enterprise System. Service orders are transmitted electronically to and from our technicians along with fillable forms, pictures, and other site-specific information and documents. Our state-of-the-art dispatch scheduler and GPS routing capabilities enable us to locate resources, check inventory, and route the right technician for the job. Our compliance technicians utilize JetTrac field inspection software on tablets to streamline the process, ensure accuracy, eliminate human error, and automate the workflow process. These tools, and others, enable us to take excellent care of our clients.

CLIENT TESTIMONIALS

"Western Pump provides us with world-class service in all regards. Timely response, safety, and quality work are top priorities for our facility, and we have always had excellent performance from Western Pump. They have worked with our local inspectors to make sure everything is in order; paperwork, equipment conditions, test procedures have consistently been nearly flawless. We will continue to use Western Pump for all our DUSTO and service work."

- Scott Anderson
CONRAC SOLUTIONS



"Western Pump performed very well. They provided welcome expertise and guidance both on the technical elements as well as permitting. The work was completed safely and with a high level of quality. Western Pump overcame some difficult site conditions and completed the work ahead of schedule. I look forward to the opportunity to work with them again."

- Jacob Thurlow
THE HASKELL COMPANY

ORGANIZATION

Using a project team concept, Western Pump performs and provides services as a full-service one-stop construction and service firm. Western Pump's extensive involvement in the Petroleum Equipment Institute (PEI), Associated Builders and Contractors (ABC), Associated General Contractors (AGC), and other service and construction trade associations has enabled Western Pump to develop the most experienced and qualified team of in-house personnel, external support consultants, and subcontractors available. When a project or contract requires it, support consultants and subcontractors who have previously been part of a successful Western Pump Design/Build or service contract team will be brought into the project as a team member. Over the past seven decades Western Pump's project teams have been involved in or completed over 2,000 commercial, retail, oil, fast food, service station, education, and government projects and contracts.

The knowledge, experience, expertise, and resources available from Western Pump are unequaled. Western Pump selects only qualified, responsible, progressive, and service-oriented staff members and consultants to be part of our team.

During the organization of a project team it is very important to equip the team with only those services and expertise which will be required for a given project. Western Pump's extensive knowledge of the true and accurate scope of services provides the background and information necessary to formulate such a team. Based on the existing clientele of Western Pump, project teams may include, but not be limited to, project architects, project managers, project engineers, land surveyors, civil engineers, landscape architects, mechanical/plumbing engineers, structural engineers, electrical engineers, soils engineers, fire suppression and prevention engineers, environmental engineers and planners, general architects, traffic engineers, asbestos specialists, noise consultants, canopy manufacture engineers, geotechnical engineers, geologists, inspectors, code regulators, and UBC Board members, along with substantial administrative, technical and clerical support personnel.

CLIENT TESTIMONIALS

"Western Pump continually takes on all new projects we present to them with a professional and positive attitude. The technicians that work with Western Pump provide amazing on-site support and service!"

- Loren Shediak, **MARATHON PETROLEUM/SPEEDWAY CORPORATION**

"Western Pump consistently performs quality service and reasonable rates. We consider them a valued partner".

- Drew Flansburg, **MARATHON PETROLEUM/SPEEDWAY CORPORATION**

AWARDS

Outstanding Family-owned Business Award, 2005 – San Diego Business Journal

California's Best Places to Work Award, 2007 – Employers Group and San Diego Magazine

Excellence in Safety & Performance, 2014-2016 – San Diego International Airport Authority

San Diego's Best Places to Work, 2006 – San Diego Business Journal

Outstanding Supplier Recognition Award, 2016 – Tesoro Refining & Marketing

Excellence in Construction Award, 2017 – Associated Builders & Contractors (ABC) San Diego Chapter



Doehrman, a Western Pump Company, is one of the leading vehicle maintenance equipment providers/contractors in the southwest United States. Over the past four decades, Doehrman Company has successfully met the expectations of countless customers in a very diverse marketplace. Our market includes, new car dealerships, paint and body shops, fleet maintenance facilities, transit facilities, school and fire maintenance facilities, Bureau of Reclamation and Department of Defense maintenance facilities, Homeland Defense facilities, state and municipal maintenance facilities, U. S. Postal Service facilities, OEM automakers proving ground facilities, various industrial facilities, national tire and auto store centers, independent garages, quick lube chains and home garages.

Doehrman, a Western Pump Company, is based in Phoenix, Arizona and holds contractors licenses in Arizona (#116045 and #072049), California (#589300) and Nevada (# 0029472). We have completed projects throughout the United States and as far away as the Middle East.

Our staff has hundreds of years of experience in the automotive and vehicle service industry and has contributed in many ways toward setting the standard for “state of the art” modern shop design. Working closely with facility designers, customers, and equipment manufacturers over the years, we have been able to bring several innovations to the industry that have been incorporated into service facilities nationwide. Some of the new car parts and service facilities we have developed /constructed are recognized as being the best in the world by customers and industry experts alike. We were also involved in helping to develop the standards used in the ALI’s (Automotive Lift Institute) lift inspection program which is widely-used across the nation. We, as a company, are very proud of the industry contributions that we’ve made over the years.

As a recognized leader and authority in our industry we are often called upon to offer expert witness testimony in completed operations, workers compensations, personal injury and wrongful death lawsuits.



SALES

Doehrman, a Western Pump Company, strives to provide one-stop, turnkey solutions to our customers. Our sales professionals bring decades of experience to the sales process and are unsurpassed in our industry.

The following is a list of our capabilities: Automotive, truck, bus and specialty vehicle lifting equipment, compressed air systems and compressor equipment, vehicle exhaust systems, fluid control systems and lubrication equipment, body shop equipment, alignment and wheel service equipment, automotive and industrial spray booths, prep stations and powder coating booths, carwash equipment, parts department mezzanine and storage systems, work benches, workstations and tool storage boxes, above ground fueling systems, underground storage tank removals and upgrades, leak detection and tank monitoring, environmental services including phase one inspections and soil remediation, and a myriad of other automotive shop equipment including storage cabinets, a/c machines, vices, light reels, grinders, key control systems, engine analyzers, battery charging and test equipment, shop coolers and much, much more.

CONTRACTING AND INSTALLATION SERVICES

Doehrman, a Western Pump Company, supplies, installs and services automotive service equipment to a very diverse market. We have extensive expertise in our industry and have developed resources to meet our customers' needs and expectations. From car enthusiasts, home garages, independent and national service and tire centers, to the largest new car dealerships and transit facilities. We offer one-stop turnkey solutions to their shop equipment needs.

Our primary business focus includes outfitting fleet vehicle maintenance facilities, new car dealerships, automotive/industrial spray booth facilities and body shops.

We offer professional CAD and design services and work with our customer's architects and engineers to secure the necessary building permits.

Doehrman, a Western Pump Company, is fully insured and bonded and has a very good safety record. We are fully aware that our safety record is a very important customer consideration in choosing a contractor.

SERVICE DEPARTMENT

Doehrman, a Western Pump Company, has a reputation built on a firm commitment to stand behind every piece of equipment that we sell and install. Customer satisfaction is our primary goal. We maintain a fleet of more than 30 installation and service vehicles and are the warranty service center for most of our equipment providers. Our service techs and installers collectively have hundreds of years of experience and are factory trained in their areas of expertise. We work closely with our vendors to ensure that our personnel have the knowledge and training necessary to safely and properly maintain the equipment we have provided.

In addition, to providing repair services for the lines of equipment we sell, we also offer professional preventive maintenance programs and service contracts for customer's lifts, compressors, car wash and paint booth equipment. We also perform ALI inspections on many of our customers lifting equipment.

RYAN RETHMEIER, President



EDUCATION

Bachelor of Science in Business
University of Phoenix
Business Administration,
Marketing San Diego State University
MAP Management Development Program

ICC CERTIFICATIONS (CA)

UST Installation/Retrofitting
Designated UST System Operator
UST Service Technician
Vapor Recovery System Installation
Vapor Recovery System Testing

MEMBERSHIPS & AFFILIATIONS

Member, Petroleum Equipment Institute
(PEI) Board of Directors Representing
District 9 (2015-2016, 2018-2019)

Committee Member/Co-Author, PEI
Recommended Practices for the
Installation of Marina Fueling Systems
(RP-1000)

Committee Member/Co-Author, PEI The
Entry Level Service Technician Training
Course

Committee Member, PEI Education and
Convention (2017-2019)

Member, The BEST CEO Group

QUALIFICATIONS

As President of Western Pump, Mr. Ryan Rethmeier's professional experience encompasses 26 years of both specialty and general construction, and services. His expertise covers a wide array of projects, services, and clients ranging from governmental (Military, State and Municipalities) to institutions (colleges and school districts) to major corporations and private owners. Mr. Rethmeier has a Bachelor of Science in Business Administration, a California A General Engineering Contractors license, multiple International Code Council (ICC) certifications, and dozens of petroleum equipment manufacturer certifications.

LEVELS OF RESPONSIBILITY

Mr. Rethmeier is responsible for providing management, supervision, and support for all of Western Pump's design, construction, and service efforts, and contractual obligations. Mr. Rethmeier works closely with his key managers and their staff to meet its mission of providing Western Pump's clients with convenience, reliability and peace-of-mind, exceptional customer service, reduced downtime, and cost savings.

GOVERNMENT PROJECT EXPERIENCE

- COCO Fuel Services Facilities, Camp Pendleton, CA
- MCAS Miramar Auto Service Center, San Diego, CA
- MCCS Mini Mall & Fuel Station, Twentynine Palms, CA
- Ocotillo Marine Mart, Twentynine Palms, CA
- Metro Division 13 Bus Maintenance Facility, Los Angeles, CA
- County of San Diego Operations Center, San Diego, CA
- SANDAG East County Bus Maintenance Facility, El Cajon, CA
- Border Patrol Stations, multiple (Boulevard, Campo, Wilcox, Lordsburg)
- Navy Base San Diego Chollas Creek Quaywall Fuel Tank Project
- NAS North Island Fuel Dock Modifications
- USMC Multiple Site Fuel System Modification
- MCAS Miramar Vapor Recovery Phase-II Upgrade

COMMERCIAL and RETAIL PROJECT EXPERIENCE

- Sycuan Market, El Cajon, CA
- Love's Travel Stops & Country Stores
Westmorland, Kingman, Las Vegas, Gila Bend, Casa Grande, Ripon, Coachella
Flyers Energy Cardlock Facilities
Bakersfield, Banning, Hesperia, Bloomington, San Diego, Ontario, Barstow,
Fontana, and more
- Tesoro/Adeavor/Speedway, multiple sites (CA)
- Pilot/Flying-J #1132, Brawley, CA
- Walmart/Sam's Club, multiple sites (CA)
- San Diego International Airport Rental Car Center (ConRAC)
- Otay International Truck Stop / Truck.Net, Otay Mesa, CA
- Del Rey Fuels, Marina Del Rey, CA
- Costco Wholesale, multiple sites (CA)
- Golden Acorn Casino, Campo, CA
- Hollywood/Jamul Casino, Jamul, CA
- Chevron Stations, Inc. #207541, San Diego, CA
- Lodi Memorial Hospital, Lodi, CA
- San Diego Gas & Electric (SDG&E), multiple sites
- San Francisco International Airport (SFO), Ground Transportation Unit
- ETZ Chayim Congregation, Palo Alto, CA





MICHAEL MIZICKO, Vice President of Operations

EDUCATION

Computer/Electronics Technologies
Cuyamaca College
Electricians Mate Second Class United
States Navy (Honorable Discharge)
MAP Management Development Program

LICENSES

Responsible Managing Employee (RME),
C10 Electrical Contractor

CERTIFICATIONS

Journeyman Electrician
UST Installation/Retrofitting
Designated UST System Operator
UST Service Technician
Vapor Recovery System Installation
Vapor Recovery System Testing
HAZWOPER & Emergency Response
Confined Space Training

MEMBERSHIPS & AFFILIATIONS

Committee Member/Co-Author, PEI
Recommended Practices for the
Installation of Underground Liquid Storage
Systems (RP-100)

Ad-Hoc Committee Member and Co-Author,
PEI The Service Technician 2nd Level
Training Manual

Member, The BEST Key Group



QUALIFICATIONS

As Vice President of Field Operations for Western Pump, Mr. Michael Mizicko has over 25 years of experience in the Petroleum Industry. His expertise includes not only that of a Journeyman Electrician, but also that of a high-level Fuel Services Technician with in-depth knowledge and understanding of mechanical, electrical, and electronics systems. Mr. Mizicko maintains multiple International Code Council (ICC) certifications, dozens of petroleum equipment manufacturer certifications, and is Western Pump's responsible managing employee (RME) for the California C10 Electrical Contractors license.

LEVELS OF RESPONSIBILITY

Mr. Mizicko, and his team of professionals, are responsible for supervising, managing, and directing the execution efforts of Western Pump's Service and Construction Teams. With his breadth and depth of knowledge, Mr. Mizicko serves as an invaluable resource to both internal and external customers.

GOVERNMENT PROJECT EXPERIENCE

- COCO Fuel Services Facilities, Camp Pendleton, CA
- MCAS Miramar Auto Service Center, San Diego, CA
- MCCS Mini Mall & Fuel Station, Twentynine Palms, CA
- Ocotillo Marine Mart, Twentynine Palms, CA
- City of San Diego, San Diego, CA
- City of Los Angeles, Department of Water & Power (LADWP)
- Border Patrol Stations, multiple (Boulevard, Campo, Wilcox, Lordsburg)
- Metropolitan Water District (MWD) of Southern California
- State of California Department of Water Resources (DWR)
- USMC Multiple Site Fuel System Modification
- MCAS Miramar Vapor Recovery Phase-II Upgrade
- Los Angeles World Airports (LAWA), Los Angeles, CA
- Port of Long Beach, Long Beach, CA
- Marine Corps Recruitment Depot (MCRD), San Diego, CA

COMMERCIAL AND RETAIL PROJECT EXPERIENCE

- Sycuan Market, El Cajon, CA
- San Diego International Airport Rental Car Center (ConRAC)
- BP/Arco, multiple sites (CA)
- Tesoro/Adeavor/Speedway, multiple sites (CA)
- Pacific Convenience & Fuels, multiple sites (CA)
- United Oil, multiple sites (CA)
- Costco Wholesale, multiple sites (CA)
- Chevron USA Products, multiple sites (CA)
- Morongo Travel Center, Cabazon, CA
- Travel Centers of America (TA), multiple sites (CA)
- Love's Travel Stops & Country Stores
Westmorland, Kingman, Las Vegas, Gila Bend, Casa Grande, Ripon,
Coachella, and more
- Walmart/Sam's Club, multiple sites (CA)
- Otay International Truck Stop / Truck.Net, Otay Mesa, CA
- Del Rey Fuels, Marina Del Rey, CA
- Golden Acorn Casino, Campo, CA
- Warner Brothers, Los Angeles, CA
- Lodi Memorial Hospital, Lodi, CA
- San Diego Gas & Electric (SDG&E), multiple sites (CA)
- JFK Memorial Hospital, Indio, CA

RYAN SHADBURN,

Vice President of Business Development



EDUCATION

Coursework in Business Administration,
Marketing San Diego State University

MAP Management Development Program

Darren Hardy Business Masterclass
Corlea Group Marketing Program
PEI Young Executives

MEMBERSHIPS & AFFILIATIONS

Petroleum Equipment Institute (PEI)

Associated General Contractors (AGC) of
America San Diego Chapter

Associated Builders & Contractors (ABC)
San Diego Chapter

Tribal Summit Group

Southern California Golf Course
Superintendent Association

Arizona Petroleum Marketers Association

QUALIFICATIONS

As one of Western Pump's sales leaders, Mr. Ryan Shadburn's experience in the petroleum equipment industry spans over 14 years. His knowledge of the rules and regulations (as they pertain to the storage and dispensing of hazardous liquids) coupled with expertise in both retail and commercial petroleum equipment enable Mr. Shadburn to function as a valued resource for our clients.

AREAS OF EXPERTISE

• Petroleum Equipment

Fuel Dispensers
Underground Storage Tank (UST) Systems
Aboveground Storage Tank (AST) Systems
Monitoring Systems
Vapor Recovery Systems
Piping Systems
Submersible Pump Systems
Point-of-Sale (POS) Systems
Customer Loyalty Reward Programs
Lighting Systems
Fuel Management Systems
Diesel Exhaust Fluid (DEF) Systems

• Regulations

Air Quality
Water Quality
Environmental Protection Agency (EPA)

Services

Design/Build
Permitting
Petroleum Construction (ground-ups, remodels)
Petroleum Equipment Installation
Start-up & Initialization
Compliance Inspections & Testing
Fixed-Price Service Agreements (FPSAs)
Service Contracts
Fuel Cleaning/Polishing

KEY CLIENT LIST

- Love's Travel Centers & Country Stores
- Albertson's / Vons
- Walmart / Sam's Club
- Costco Wholesale
- Pilot/Flying-J
- Phillips 66
- Marathon Petroleum
- Speedway
- United Pacific
- Morongo Band of Mission Indians
- Sycuan Tribal Development Corporation (STDC)
- Tetra Tech
- Weston Solutions, Inc.
- Sea World of California
- United Parcel Service (UPS)



DEREK RETHMEIER, Vice President/Pre Construction

ADDRESS:

3235 F Street San Diego, CA 92102

EMAIL:

derekr@westernpump.com

PHONE NUMBER:

(619)578 - 2187

YEARS OF EXPERIENCE:

22 years

KEY QUALIFICATIONS

- Over twenty-two (22) years of direct experience in Petroleum Equipment and Vehicle Maintenance Facility Construction.
- Broad base of knowledge of the construction process (underground and above ground).
- Expert tradesman, pipe fitter, welder/fabricator, mechanic.
- Top-notch problem-solving skills and attention to details.

CERTIFICATIONS

- RME General B Contractors License Qualifier
- 40-Hour HAZWOPER Safety Certified
- 30-Hour OSHA Construction Safety Certified
- 8-Hour Refresher OSHA
- API Worksafe Certified
- Certified by most major petroleum and automotive equipment manufactures including (but not limited to): Rotary Lift, Graco, Lincoln, Balcrank, Samson, ConVault, Champion Pneumatic, Saylor-Beall, Brugg Pipesystems, Mohawk Lifts, and Containment Solutions
- International Code Council (ICC) - California UST Installation Retrofitting
- International Code Council (ICC) - California UST Service Technician
- International Code Council (ICC) - Vapor Recovery System Installation and Repair
- International Code Council (ICC) - Vapor Recovery System Testing and Repair





DANIEL MILLER, Construction Superintendent

CERTIFIED TRAINING:

Modern Welding
Xerxes
Containment Solutions UST
Bravo Systems UST and sump install
Veeder-Root Level 4
Healy Vapor Recovery
40 hour Hazwopper
Fork lift/reach fork
Flex-ing
NOV Fiber Glass Systems
Confined Space Training
CNI EVR Systems
INCON Fuel Management
30 hour osha training
International Code Council (ICC)
UST Installation/Retrofitting
Vapor Recovery System installation and repair
Service technician

EXPERIENCE OVERVIEW

Daniel Miller is our Field General Superintendent with 12 years' experience in construction and 9 years of direct fueling project supervision. Fueling system installation requires the ability to coordinate several of the most complex and risky construction trades simultaneously. Daniel Miller has a proven track record of supervising and completing the most fuel system installations in San Diego and Southern California. Daniel Miller is a certified by the International Code Council (ICC), for UST (Underground Storage Tanks), Vapor Recovery System Installation and Repair, and California UST Service Technician. Other certifications include: Fiber glass systems NOV, Environ Pipe Installer, Omega flex piping, Brugg piping systems, Modern Welding, Xerxes UST, Containment Solutions UST, Bravo Systems UST and sump install, Veeder-Root Level 4 & V/R vapor, INCON level 4 sump tester, 40 hour Haz-whopper/confined space certification weights & measures service agent, 30 hour OSHA training, QA-QC training, Gilbarco safety, CNI, CPR-First Aid, fork lift & reach fork certification, scissor lift and boom lift certification, & fall protection.

RELEVANT PROJECT EXPERIENCE

SWINERTON BUILDERS: Installed 10k containment solutions underground storage tank for diesel with smith fiberglass piping 3" over 2" (2) supply (2) return and (1) vent 2 turbine sumps and fill sump to service the backup generator system at the hospital in Lancaster ca installed complete Incon monitoring system for both tank and piping, installed RCI recirculating fuel polishing unit.

KEVCON: Installed 1k Modern split underground storage tank 540gal diesel 360gal gasoline, Ameron fiberglass piping 3' over 2" Gasboy dispensers 1 pressure 1 suction, for maintenance vehicle fueling at Miramar cemetery installed complete Incon monitoring system for both tank and piping.

MENCO PACIFIC: Installed 10k containment solutions aboveground storage split 7k gasoline 3k diesel tank at NEX 32nd street Naval base for fuel system supply to the floating dock installed Brugg double wall stainless steel continuous piping from tank to fuel dock, installed hose reel with meter on fuel dock for dispensing, installed Omn-tec monitoring system.

AUSTIN/SUNDT JOINT VENTURE: Installed 3 30k Xerxes underground storage tanks, smith fiberglass piping underground 4" over 3", 6" over 3" steel piping welded feeding levels 2 and 3, installed 36 Gas boy dispensers for gasoline with 72 fueling positions 12 dispensers on level 1, 12 on level 2 and 12 on level 3 also installed 15 Belanger car wash's with reverse osmosis system, reclaim pumps reject pumps and spot free pumps at the San Diego International Airport Car Rental Facility.

CLARK CONSTRUCTION: Installed air compressor system and lubrication system with above ground oil tanks, process piping and hose reels at maintenance facility for MTS in El Cajon.

SUNDT/LAYTON: Installed 10k above ground storage tank diesel for backup generator system and 30k above ground LPG tank system for Donovan state prison.

TURNER: Installed 1 car wash brushless system and 1 bus wash brushless system at San Francisco international airport SFO. scheduling, project communication and documentation, and health and safety.

2017	SFO Fleet Maintenance Facility, Lube/Wash/Equip	\$873,565
2016	County of San Diego Fleet Facility, Vehicle Fueling/Lube	\$717,600
2016	Hawthorne Machinery San Diego	\$117,000
2015	San Diego International Airport, Rental Car Return Facility	\$4,500,000
2015	Donovan State Correctional Facility, Large LPG Facility	\$825,000
2015	Division 13 Bus Maintenance Facility LA	\$675,000
2014	MTS San Diego Bus Maintenance Facility, Lube/Piping	\$525,000
2014	29 Palms MCCS Ocotillo Marine Mart	\$543,836
2013	Miramar National Cemetery, Facility Fueling System	\$152,372
2013	San Diego Naval Medical Center, Interior Renovation	\$1,500,000
2013	San Luis Obispo Men's Colony, UST Fuel Facility	\$90,000



John Hendrick, Business Development

QUALIFICATIONS

Having over 13 years in the petroleum industry, Mr. John Hendrick brings his knowledge of equipment, site management and a wholesale petroleum background to our customers. Mr. Hendrick is an experienced sales and operations professional with a track record of proven sales success in petroleum equipment, fleet management software/equipment, capital equipment, maintenance & construction services, EV charging, wholesale fuel, as well as retail store operation and general management. With an operational and technical background, Mr. Hendrick is an adept communicator, collaborator, and negotiator across all levels of organizations.

EDUCATION

Master of Business Administration

- Loyola Marymount University

Bachelor of Science

- California State University, Chico

SKILLS & ABILITIES

New Business Development
Account Management
Customer Service
Negotiation
Sales Management
Strategic Planning
Operations Management
Project Management
Problem Solving
Marketing
Procurement
Business Analysis

LEVELS OF RESPONSIBILITY

New Client Prospecting
Account Development
Relationship Management
Client Consultation
Scope & Bid Creation
Cross Functional Collaboration

MEMBERSHIPS & AFFILIATIONS

Petroleum Equipment Institute (PEI)
PEI Young Executives

AREAS OF EXPERTISE

Equipment

Fuel Dispensers
Point of Sales Systems
Underground Storage Tank (UST) systems
Aboveground Storage Tank (AST) systems
Monitoring Systems
Automotive Service Equipment

Petroleum Equipment Manufacturers

Gilbarco Veeder Root
Gasboy
Xerxes
Containment Solutions
Franklin Fueling Systems
Bravo Systems
VST
Rotary Lift
Graco

Services

Petroleum Equipment Installation
Compliance & Service Agreements
Service Contracts
Fuel Cleaning/Polishing
Petroleum Construction
Fuel Management System Installation
Fixed-Price Service Agreements (FPSAs)

KEY CLIENT LIST

United Pacific	LAUSD
G&M Oil	LADWP
Jacksons Oil	The City of Pasadena
World Oil	John Wayne Airport
H&S Energy	Sunstate Equipment Rentals
Parkland USA	Kenan Advantage Group
Sysco	Republic Services
The Port of Long Beach	B&T Service Station Contractors
American Golf	Fuel Pros



GREG MCLUCAS, Project Manager

EXPERIENCE OVERVIEW

Mr. McLucas has 40 years of experience in the fuels industry, including system design, construction, inspection, testing, and quality control of systems repair and sustainment activities. He is also experienced in site coordination, operations planning, organization, and successful management. His management experience of POL facilities includes repair of pipelines, and the sustainment, restoration, and modernization (SRM) of associated POL facilities and equipment, such as fuel storage tank inspections, repairs, coatings, testing, system commissioning activities, and maintenance projects. In his role as project manager, he serves as the primary point of contact for the client and is responsible for overall technical, safety, quality, and administrative performance of the TO, including status reporting, financial tracking, scheduling, project communication and documentation. Mr. McLucas is versed at UFGS and submittal requirements and USACE three-phased QC system aimed at preventing deficiencies.

RELEVANT PROJECT EXPERIENCE

CQC Manager, RORE, Inc., USACE Omaha POL MATOC, Various Projects and Locations

Providing quality control management for fuel system repairs, oil water separator, and product recovery tank, including demolition, debris removal, and new construction activities. *Responsibilities:* Develops and submits daily QC reports; inspects all site work to ensure it is implemented in accordance with approved standards and that the QC procedures set forth under the contract are followed; conducts interim inspections; has stop work authority; and inspects completed work to ensure any defects in materials or workmanship are properly identified and corrected in a timely manner; and ensures compliance with performance work statement, Construction QC Plan, Accident Prevention Plan, work plan, and Corporate Quality Management Plan.

Project Manager, Advanced Chemical Transportation, San Jose, CA,

Managed POL construction projects and utilized knowledge of POL systems to communicate and understand technical issues. *Responsibilities:* Oversaw projects for the installation and/or repair of aviation and ground fuels equipment, AST and UST installation and removal, hazardous waste cleanup and disposal, including execution, budget estimating and contract management, status reporting, financial tracking, scheduling, project communication and documentation, and health and safety. Ensured projects completed in accordance with contract requirements and in compliance with local, state, federal, Base, and industry laws, rules, regulations, and standards. Representative POL construction projects include:

NAVFAC, Defense Fuel Support Point (DFSP) Naval Base Coronado and Naval Base Point Loma, San Diego, CA. SOW: Managed emergency repair of the ruptured 8-inch fuel pipeline in accordance with project specifications and drawings. Project included: video camera inspection of the 8-inch carrier and 12-inch containment piping; removal and replacement of approximately 65 feet of 8-inch and 12-inch piping; 100% NDE of all welds; pneumatic testing of new piping; pipe coatings and system commissioning activities.

NAVFAC, Marine Corps Logistics Base (MCLB) Yermo Annex, CA. SOW: Managed the removal of three 12,000-gallon USTs, removal of two underground hoists, removal of 1000 tons of contaminated soil and disposed, backfill and compacted, placed asphalt, and capped excavation with asphalt.

Project Manager, Lemesnager Engineering, San Diego, CA,

Oversaw projects for the installation and/or repair of petroleum equipment, above- and below-ground fuel storage tank installation and removal, hazardous waste cleanup and disposal. *Responsibilities:* Managed project execution, budget estimating and contract management, status reporting, financial tracking, scheduling, project communication and documentation, and health and safety.

TRAINING:

First Aid/CPR/AED, 2018

Blood Borne Pathogens Training, 2018

USACE Construction Quality Management (CQM) for Contractors Certification, 2016

40-hour USACE EM 385 1.1 Training, 2015

OSHA Confined Space Entry Certification, 2013

Modern Welding Tank Investigation Certificate, 2000

Xerxes Tank Installation Certificate, 2000

Red Jacket Master Mechanic and Tank Monitor Certification, 1998

AQMD Rule 461 Gasoline Storage/Dispensing Certification, 1998

ICC UST Operator Certification, 2002

ICC UST Installer/Retrofitting Certification, 2002

ICC Vapor Recovery System Installation and Repair Certification, 2002

OPW EVR Phase I Certification, 2002

Hirt (VCS 100 System, EVR Phase II, EO VR-205), 2002

Meets/Exceeds RFP Requirements:

40 years of experience in the POL Facility industry with 30 years of experience in managing POL construction projects
Knowledge of POL systems sufficient to communicate/understand technical issues.

Current Knowledge of POL Specifications and QA/QC methods, including tank inspection, welding, and installation

Completed CQM for Contractors

MATTHEW BODDE, Estimator/Project Manager

EDUCATION

Bachelor of Science,
Geology and Geophysics
University of Missouri, Rolla

CERTIFICATIONS (CA)

UST Installation/Retrofitting
Vapor Recovery System Installation

SKILLS & ABILITIES

Sales Engineering
Plans & Specifications
Equipment Take-offs
Estimates
Scope Writing
Submittals, RFIs
Project Management

QUALIFICATIONS

Mr. Matthew Bodde is an accomplished Estimator/Project Manager with a penchant for solving complex technical problems and extensive civil, mechanical and environmental engineering experience.

Early in Mr. Bodde's career, he worked as a Petroleum Supply Specialist for the United States Army supervising fueling operations, equipment maintenance, and spill containment/cleanup. Mr. Bodde earned a Bachelor of Science Degree in Geology and Geophysics from University of Missouri, Rolla shortly thereafter. Determined to make a name for himself, Mr. Bodde worked his way up the corporate ladders at CTI & Associates, the City of Ann Arbor, the City Tecumseh, and Sperry-Sun Drilling Services. Mr. Bodde also worked as an Instructor for the North Harris County Community College (NHCCC) in Houston, TX where he pioneered and taught NHCCC's first course on Environmental Groundwater.

Mr. Bodde's experience in the Petroleum and Automotive Equipment Industries dates to the early '90s. Mr. Bodde worked as a Project Manager for both Hunt & Hunt Engineering and Perry Williams, Inc. From there, Mr. Bodde joined Western Pump in 1997 where he has become one of our most trusted resources.

AREAS OF EXPERTISE

• Fuel Systems & Vehicle Service Equipment

Design, Engineering, Permitting
Scope Writing, Bidding, Estimating o Construction
Project Management

• Regulations

Federal, State, County
CUPA, CARB
California Fire Code, NFPA

Geotechnical

Drilling & Groundwater Testing Tools o Geological Surveying
Data Logging
Interpretation

• Soils, Concrete, Asphalt

• Site Assessments

• Corrective Action Plans

• Remediation System Design & Installation

• Geological Surveying

PROJECT EXPERIENCE•

- Orange County Transportation Authority (OCTA)
- Southern California Edison (SCE) Maintenance Shop
- Gardena Transit
- LA Police Department Headquarters Maintenance Garage
- Olivenhain Municipal Water District (OMWD)
- Los Angeles Department of Water & Power (LADWP)
- Metropolitan Water District (MWD) of Southern California
- Marine Corps Base (MCB) Camp Pendleton
- Excel Transportation
- San Diego Gas & Electric (SDG&E)
- Love's Travel Stops & Country Stores



PROFESSIONAL REGISTRATION

Architect, Arizona License 29559
September 1995

AFFILIATIONS

Roots of Humanity Foundation for the
Arts, 501(c)3 – Co-Founder / Treasurer
(2017-present)

QUALIFICATIONS

Architect-Developer-Entrepreneur with three decades of experience in intelligently planning for and managing the development of approximately 3,000 successful commercial and religious projects throughout the Southwest. At the end of 2017, Greg retired his position as one of the four Principals/Founders of ARCHITEKTON - where he served for more than 28 years. His love of development and assisting others in the planning of financially successful projects is where he has found his greatest satisfaction. Directing the development of beautifully planned projects - that are also financially, environmentally, and contextually successful is where he excels. He is well known in the Southwest for his understanding of the development world and for his abilities to effectively navigate government processes and ensure a smooth and successful project outcome. Greg has become an expert at coordinating large-scale development projects, building programs and complex entitlements.

Since his retirement at the end of 2017, Greg has been able to focus his 30+ years of experience in serving the construction industry and assist those who wish to develop highly successful development projects of their own. He brings his experience on more than 3,000 projects, with a broad range in Commercial, Public, Religious, Mixed Use, Medical and Community Centered projects, as well as a specialty in developing Gas Stations, Travel Centers and Fueling System projects. Greg has always maintained a strong Client Service ethic, and a dedication to assist his clients in achieving excellence in Design Aesthetic, Financial Viability and Project Functionality!

Greg recently served as the managing Architect/Principal for a significant Capstone project - the LDS Temple in Gilbert, AZ. This is a 20-acre masterplan project with multiple prototype buildings and the highest levels of design and detailing - approx. \$100,000,000 in size. Besides utilizing his leadership skills in the Master Planning, Architecture, Utility Coordination and Design-Build assets, Greg utilized the latest computer modeling and 3D Printing systems to develop highly detailed drawings, 3D prints and molds for the actual fabrication of thousands of bronze castings for custom light fixtures, door hardware, stair railings, emblems, crown moldings, and CNC carved decorative woodwork. This technology saved millions of dollars in costs and months of time in the fabrication processes, while providing highly detailed and beautifully ornate fixtures, railings and finish details throughout this once in a lifetime project.

RELEVANT PROJECT EXPERIENCE

Antelope Canyon / Navajo Tours

Visitors Center and Boutique Hotel Projects (Design/Build)

Wild Horse Pass

Retail + Fueling Station for Gila River Indian Community (Design/Build)

Lone Butte Trade Center

Chevron + Tobacco / Gila River Indian Community (Design/Build)

On-Auk-Mor

Tobacco Shops/Chevron Fueling - Salt River Pima Maricopa Indian Community (Design/Build)

Ak-Chin

Gas Station/Retail Development Project Planning

Navajo Nation

Twin Arrows Retail Development Projects (in Construction) (Design/Build)

Santa Rosa Tachi Tribe

Retail & Fueling Development Project

Texaco

1000+ Retail + Fuel Facility + Auto Service / Wash projects, AZ, CA, NV, TX, WA (Design/Build)

Exxon

250+ Retail Fuel Facility Service/Wash projects, AZ, CA, NV, TX, WA

Mobil, Chevron, Shell, Diamond Shamrock, Valero, Tosco, Tesoro, Unocal, AMPM

1000+ Retail + Fuel Facility + Auto Service/Wash projects, AZ, CA, NV, TX, WA



TWENTYNINE PALMS MARINE MART



SCOPE OF WORK

Mini-Mall/C-Store is 5,450-s.f. with Sales Area, Food Station, Restrooms, Office Space, Refrigerated Coolers, Storage, Loading, and Service Areas. The Barbershop is 300-s.f., the Laundromat is 900-s.f., and the Canopy Structure is 3,500-s.f. There are also Underground Storage Tanks (3), Fuel Dispensers (6), and Propane Tank Exchange Station

SERVICES PROVIDED

Architectural Design Engineering
Pedestrian/Vehicular Traffic Flow
Permitting
WebCM Quality Assurance/Quality Control
Grading
Drainage Systems
Environmental Controls
Excavation & Trenching
Fuel System Installation
Monument Sign Installation
Concrete & Asphalt
Exterior & Area Lighting
Landscaping & Irrigation
Walkways and Sidewalks
Furniture, Furnishings, & Equipment
Point-of-Sale System Installation
Regulatory Inspections & Testin
Start-up & Commissioning
Employee Training
OMSI Manuals

GENERAL CONTRACTOR: Western Pump

CONTRACT VALUE: \$4,790,000

PROJECT DESCRIPTION

Design/Build Construction of the MCCS Mini-Mall and Fuel Station, Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, CA. This 7,200-s.f. Mini-Mall Complex consisted of a C-Store, Barber Shop, Laundromat including all utilities and site development, providing a complete and useable facility. The core spaces of the C-Store are the sales area, food station, wine and liquor section, video/DVD rental, restrooms, office space, refrigerated coolers, storage, loading, and service areas. The building footprint also included a separate Barber Shop and a Laundromat.

The Fuel Station for this project included a 3,500-s.f. Canopy Structure to provide covering for two (2) islands with six (6) Multi-Product Dispensers (MPDs), three (3) 20,000-gallon Underground Storage Tanks (USTs), a Monument Price Sign, a 3-Terminal Point-of-Sale (POS) System, and a Tank and Continuous Monitoring System.

CHALLENGES & RESOLUTIONS

Western Pump's design/build team worked closely with all project stakeholders to meet all project requirements while staying within the cost limitation (\$4,900,000). To accomplish this, a concept design workshop (CDW) was conducted to coordinate the design elements, examine project functions and requirements, quality and life safety costs, analyze alternate design concepts, expose and resolve project issues, and develop the final conceptual design.

This collaborative effort resulted in a state-of-the-art facility built to comply with California's stringent regulations including Phase-I and Phase-II Enhanced Vapor Recovery (EVR), and Assembly Bill 2481 (AB-2481).



LOVE'S TRAVEL STOP #749 (Westmorland, CA)



GENERAL CONTRACTOR

Western Pump

CONTRACT VALUE

\$2,200,000

SERVICES PROVIDED

Fuel System Permitting
Excavation & Trenching
Engineered Slide Rail Shoring Embeds
Pipe Supports
Tank Installation
Fiberglass Piping Installation
Black Iron Steel Piping Installation
Submersible Pump Systems
Centrifugal Pump Systems
Secondary Containment
Fuel System Electrical
Tank Monitoring System
Tank Pad Installation
Drive Slab Installation
Flow Meter Calibration
Decals & Signage
Start-up & Initialization
Regulatory Inspections
Compliance Testing
Record Drawings
Operation & Maintenance Manuals
Close-out Documentation

OWNER CONTACT

Love's Travel Stops & Country Stores
Chris Cummings
Supervisor of Fuel Projects
Chris.Cummings@loves.com
(405) 208-9590



PROJECT DESCRIPTION

The new Love's Travel Stop & Country Store located in Westmorland, CA. Western Pump was selected to construct the Fueling Systems for this project. Scope of work included all mechanical and electrical control systems, conduits, and wiring for the installation of a large auto and truck stop facility. Project included four (4) Underground Storage Tanks (USTs), four (4) Aboveground Storage Tanks (ASTs) with underground piping and electrical for thirty-four (34) fuel positions under two Canopies.

PROJECT FEATURES

Four (4) 30,000-gallon Underground Storage Tanks (USTs) with Deadmen Anchoring Systems
One (1) 6,000-gallong Oil/Water Separator
Four (4) 12,000-gallon Aboveground Storage Tanks (ASTs)
One (1) Tanker Truck Unloading Station
Six (6) 10-HP self-priming centrifugal Pump/Motor Assemblies
Eight (8) Submersible Pump Systems
One (1) Junge Biodiesel Blend System
Seventeen (17) Under-Dispenser Containment (UDC) Sumps
Seventeen (17) Metal Island Forms
Nine (9) Multi-Product Fuel Dispensers in the Auto Fueling Area
Eight (8) High-Flow Diesel Dispensers in the Truck Fueling Area
Three (3) Remote Diesel Fill Stations
Product/Vapor/Vent Piping Systems (above and below ground)
Fuel Management, Leak Detection, and Monitoring Systems
In-Station Diagnostics (ISD) System

SYCUAN MARKET (El Cajon, CA)



OWNER CONTACT

Sycuan Tribal Development
Corporation
Sid Morris, Director
smorris@sycuan-nsn.gov
(619) 445-4564

SCOPE OF WORK

Ground-up Construction
5,450-s.f. C-Store
1,550-s.f. Tenant Space
6,180-s.f. Canopy Structure
Covered Patio Area
Drive-through Tobacco Sales
Quick Service Restaurant
Beer Cave
Walk-in Freezer & Cooler
Point-of-Sale (POS) Equipment
Underground Storage Tanks (USTs)
Eight (8) Fuel Dispensers
Monument Price Sign

GENERAL CONTRACTOR: Western Pump

CONTRACT VALUE: \$4,800,000

PROJECT DESCRIPTION

The Sycuan Market opened in October of 2019 and is a 5,450-s.f. C-Store with state-of-the-art amenities including a grab and go food service area, walk-in freezer, refrigerated cooler, soda and cold drink beverage counter, hot beverage counter, refrigerated merchandise displays, drive-through tobacco sales window, beer cave, office, restrooms, storage room, IT room, and covered patio area. In addition to this, there is a 1,550-s.f. tenant space area for future use and/or expansion.

The fuel system and forecourt area consist of eight (8) Multi- Product Dispensers (MPDs) offering three grades of gasoline and diesel fuel under a 6,180-s.f. decorative canopy. Five (5) Underground Storage Tanks (USTs) hold 30,000-gallons of 87- Octane Gasoline, 20,000-gallons of 91-Octane Gasoline, 20,000- gallons of Diesel Fuel, 600-gallons of Gasoline Additive, and 600-gallons of Diesel Additive.

The facility was a collaborative design/build project offering high-end reliable equipment with an environmentally sensitive approach. Despite that the facility is located on Tribal Land, Sycuan Tribal Development Corporation required that all aspects of the facility were designed and built to comply with California's most stringent regulations including federal, state, and local building and fire, and air quality.



SDIA RENT-A-CAR CENTER (San Diego, CA)



OWNER CONTACT

San Diego County Regional
Airport Authority
Brian Lahr, Construction Manager
blahr@san.org
(619) 400-2405

SERVICES PROVIDED

BIM Drawings
BIM Coordination
Excavation & Trenching
Engineered Slide Rail Shoring
Dewatering
Embeds
Pipe Supports
Seismic Restraints
Tank Installation
Piping System Installation
Manifold Valving Systems
Secondary Containment Systems
Submersible Pump Systems
Fuel System Electrical
Tank Monitoring System
Fuel Management Systems
Tank Pad Installation
Car Wash Electrical
Car Wash Installation
Regulatory Inspections
Compliance Testing
Start-up & Initialization

GENERAL CONTRACTOR

Austin | Sundt JV
Brad Kirsch, Project Director
bskirsch@sundt.com
(619) 572-2711



SUBCONTRACT VALUE: \$4,250,000

PROJECT DESCRIPTION

The new consolidated rental car center (CONRAC) at the San Diego International Airport is a massive two-million square-foot structure that houses 16 rental car companies, a customer service building, a quick-turn-around car prep facility and a 5,400-car ready/return area. Western Pump was selected to construct the Fueling and Car Wash Systems for this project. Both scopes of work include the mechanical and electrical control systems, conduits, and wiring.

CHALLENGES & RESOLUTIONS

One of the challenges on this project included a high-water table in the area of the tank pit excavation. Western Pump worked with its subcontractors to excavate, shore, dewater, test, and filter the water prior to proper discharge into the City's sewer system. Also, this multi-level Fuel System will be a first one of its kind in the County of San Diego. As such, Western Pump has worked diligently with the County of San Diego Department of Environmental Health Hazardous Materials Division (HAZMAT) to phase the required inspections so that the project schedule could be kept on track.

PROJECT FEATURES

Three (3) 25,000-gallon Underground Storage Tanks (USTs)
Twelve (12) 4-HP Variable Speed Submersible Pump Systems
Thirty-six (36) Fuel Dispensers (72 fueling positions)
Double-wall Fiberglass Underground Piping Systems
Double-wall Steel Aboveground Piping Systems
Fuel Management, Leak Detection, and Monitoring Systems
Fifteen (15) Car Wash Systems

DESIGN/BUILD FUEL SERVICES FACILITIES, (Camp Pendleton, CA)



OWNER CONTACT

Defense Logistics Agency (DLA)
Monica Fass, Contracting Officer
monica.fass@dla.mil
(703) 767-9335

SERVICES PROVIDED

Design Assistance
Permitting
Engineered Shoring
Excavation & Trenching
Dewatering
Canopy Footings
Canopy Installation
Tank Installation
Electrical Installation
Secondary Containment
Piping System Installation
Submersible Pump Systems
Enhanced Vapor Recovery (EVR)
Fuel Management Systems
Fuel System Electrical
Building & Area Lighting
Start-up & Initialization
Enhanced Leak Detection Testing
Compliance Testing
Inspections

GENERAL CONTRACTOR

WILLBROS Government Services
Rick Grossman, Vice President
rgrossman@trcsolutions.com
(918) 629-7700

SUBCONTRACT VALUE: \$4,950,000

PROJECT DESCRIPTION

Design and construction of six (6) automated fuel facilities to provide retail fuel services (JP-8, B-20, E-85, Mogas), and daily bulk fuel services (JP-8 and B-20) 24-hours a day, 365- days a year. After completion of construction, WILLBROS Government Services will operate and maintain the facilities for up to twenty (20) years. All sites are built to handle vehicles up to 60-tons.

SCOPE OF WORK

As a subcontractor to WILLBROS, Western Pump constructed six (6) new contractor-owned contractor-operated (COCO) fueling facilities at MCB Camp Pendleton, CA to provide unleaded gasoline, biodiesel, and E-85 to military vehicles. This included twenty-five (25) Underground Storage Tank (UST) Systems, twenty-four (24) submersible pump systems, six (6) fuel island canopy structures, eighteen (18) fuel dispensers, six (6) monitoring systems, six (6) vapor recovery systems, six (6) fuel management systems, and three (3) bulk loading racks. Western Pump self-performed the following tasks: fuel system permitting, excavation, shoring, soil disposal, dewatering, tank installation, backfilling, compacting, canopy footings, trenching, product piping, vapor piping, fuel system electrical (above and below ground), submersible pump installation, fuel dispenser installation, monitoring system installation, Phase-I and Phase-II vapor recovery system installation, fuel management system installation, canopy lighting electrical, fuel system pre-testing and final testing, certification, start-up and initialization of equipment with certified technicians, meter calibration, employee training, and clean-up.



OCOTILLO MARINE MART (Twentynine Palms, CA)



SERVICES PROVIDED

Architectural Design
Engineering Traffic Control
Permitting
Cleaning, grubbing, removal
Rough grading
Storm Water Pollution Prevention
Asphalt, Concrete Paving
Curb & gutter
Water service
Sanitary Sewer
Site electrical
Landscaping and hardscape
Slab on grade
Masonry
Structural steel
Carpentry
Thermal & moisture protection
Automatic entrance systems
Exterior glazing & storefront framing
Interior glazing
Gypsum wallboard
Acoustical ceiling systems
Exterior security screen/fencing
Domestic water piping
Fire protection
Site lighting

GENERAL CONTRACTOR: Western Pump

CONTRACT VALUE: \$2,950,000

PROJECT DESCRIPTION

Design/Build Construction of the MCAGCC Ocotillo Marine Mart, Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, CA. Western Pump designed and built the Fuel System for this project which consisted of two (2) 12,000-gallon Aboveground Storage Tanks (ASTs), two (2) Multi-Product Fuel Dispensers, a 2- Column Canopy Structure with LED Lighting, a Monument Price Sign, a 1-Terminal Point-of-Sale (POS) System, and a Tank Monitoring System. In addition to this, Western Pump self-performed the entire site electrical, concrete, plumbing, HVAC, fire alarm, and roofing scopes of work.

CHALLENGES & RESOLUTIONS

Design and engineering was underway for an Underground Storage Tank (UST) System; however, the end user changed its mind and decided in favor of an Aboveground Storage Tank (AST) System instead. Western Pump worked diligently with its design consultant to completely “switch gears” and deliver the project drawings on time. Once the design was completed, Western Pump then had to re-quote the project accordingly. Negative cost impacts were substantially minimized by working together to value engineer (VE) the fuel system without sacrificing quality. Unified Facilities Criteria (UFC) requirements were also adhered to in order to comply with mission critical facility standards.

SCOPE OF WORK

Marine Mart, 4,200-s.f.
Fueling Station, 1,900-s.f.
Auto and Motorcycle Parking
Pedestrian Access Sidewalk
Exterior Building Signage
On-grade auto & motorcycle parking
Site pavement and markings
Pedestrian access sidewalk improvements

Exterior Building signage
Landscaping
Self-service air compressor & water Fueling Station
Aboveground Fuel Storage Tanks
Vapor Recovery System
Refuse and recycling enclosures

PILOT FLYING J TRAVEL CENTER (Brawley, CA)



POINTS OF CONTACT

Brandon Parks, Director of
Construction at Pilot Flying J
Brandon.Parks@pilottravelcenters.com
(865) 474-3973

SERVICES PROVIDED

Excavation & Trenching
Tank Installation
Secondary Containment
Piping System Installation
Submersible Pump Systems
Enhanced Vapor Recovery
Dispenser Installation
Start-up & Initialization
Enhanced Leak Detection Testing
Compliance Testing
Inspection

CLIENT

Pilot Flying J

CONSTRUCTION COST: \$600,000

PROJECT DESCRIPTION

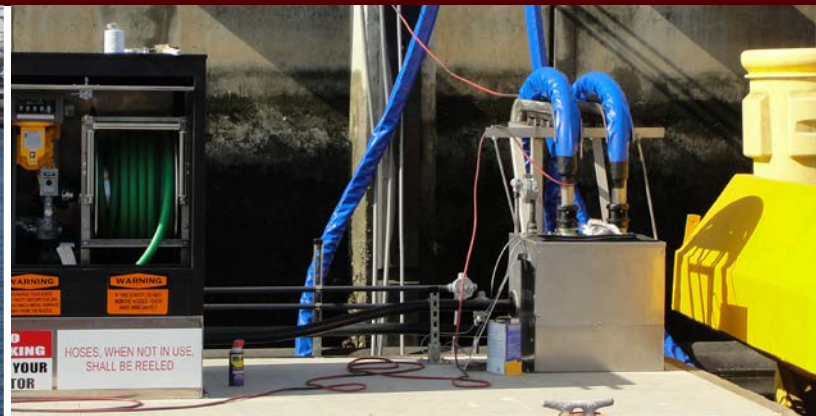
The Pilot Flying J Fuel System Install was completed in January of 2019. Western Pump was selected to construct the Fueling Systems for this project. The scope of work included all mechanical and electrical control systems, conduits, and wiring for the installation of an auto and truck stop facility located in Brawley, CA. The project included the installation of two (2) Underground Storage Tanks (USTs) and four (4) Aboveground Storage Tanks (ASTs) with underground piping and electrical for (24) fuel positions under two canopies.

PROJECT FEATURES

Two (2) Underground Storage Tanks (UST's) (25,000 gallons and 12,000 gallons)
Four (4) 12,000 gallon Aboveground Storage Tanks (AST's)
One (1) 4,000 gallon Oil Water Separator (OWS)
Tank top equipment, product piping (diesel, gas, and DEF), and vapor piping
Fuel, DEF, and OWS system vent piping
Seven (7) UST & OWS sumps
Three (3) pipe transition sumps
Twelve (12) Under Dispenser Containments (UDCs)
One (1) remote fill diesel fill station
Fuel and DEF aboveground piping
Twelve (12) fuel dispensers and hanging hardware

CHOLLAS CREEK QUAYWALL FUEL TANK PROJECT

(Naval Base San Diego, CA)



GOVERNMENT CONTACT

Philip Goodman, Project Manager
COMNAVREG SW Port Operations
philip.i.goodman.ctr@navy.mil
(619) 556-3659

SCOPE OF WORK

Design/Build
Marina Fuel Facility (MFF)
Aboveground Storage Tank (AST)
Fuel Dispensing Systems
Electrical

SERVICES PROVIDED

Design & Engineering
Permitting
Demolition, Removal & Disposal
Excavation & Trenching
Piping System Installation
Class-I Division-I &-II Electrical
Monitoring System
Compliance Testing
Flow Meter Calibration
Inspections
Project Close-out

GENERAL CONTRACTOR

Menco Pacific, Inc.
Craig Halverson, Project Manager
chalverson@menco-pacific.com
(760) 747-4405



SUBCONTRACT VALUE: \$450,000

PROJECT DESCRIPTION

This design/build Marina Fuel Facility (MFF) Project included installing a 10,000-gallon two-compartment Aboveground Storage Tank (AST) at the Quaywall and double-wall Piping Systems down to a floating dock for gasoline and diesel fuel dispensing into small craft vessels. The Department of Defense's (DoD) Unified Facilities Criteria (UFC) requirements for petroleum fuel facilities were adhered to along with California Air Resource Board (CARB) Phase-I Enhanced Vapor Recovery (EVR) for ASTs.

CHALLENGES & RESOLUTIONS

The most significant challenge with this project was designing the piping systems to accommodate for the tidal fluctuations (minus 4-feet to plus 8-feet). This was accomplished through collaboration and teamwork with the piping system manufacturer, OmegaFlex, to custom-design piping systems and cradles to hold the double-wall dock connectors in a safe manner during the rise and fall of the tides.

PROJECT FEATURES

UL-2085 Listed 10,000-gallon Aboveground Storage Tank (AST) for Gasoline and Diesel Fuel
Leak Detection & Monitoring System
Double-wall Stainless Steel Flexible Product Piping Systems with Corrosion Protection
Marina Fuel Dispensers with Enclosures for Hose Reels

DELUXE AUTO CARRIERS INC. (Jurupa Valley, CA)



SERVICES PROVIDED

Fuel System Design & Engineering
Fuel System Permitting
Procure Equipment
Canopy Installation
Tank Installation
Piping Installation
Pump Systems
Fuel System Electrical
Tank Monitoring System
Fuel Management System
DEF System
Tank Pad Installation
Drive Slab Installation
Flow Meter Calibration
Crash Protection
Decals & Signage
Start-up & Initialization
Regulatory Inspections
Record Drawings
Operation & Maintenance Manuals
Close-out Documentation

GENERAL CONTRACTOR: Western Pump

OWNER

Deluxe Auto Carriers Inc.
Jesse Holguin, President
jesse@deluxeac.com
(909) 746-0900

CONTRACT VALUE: \$400,000

PROJECT DESCRIPTION

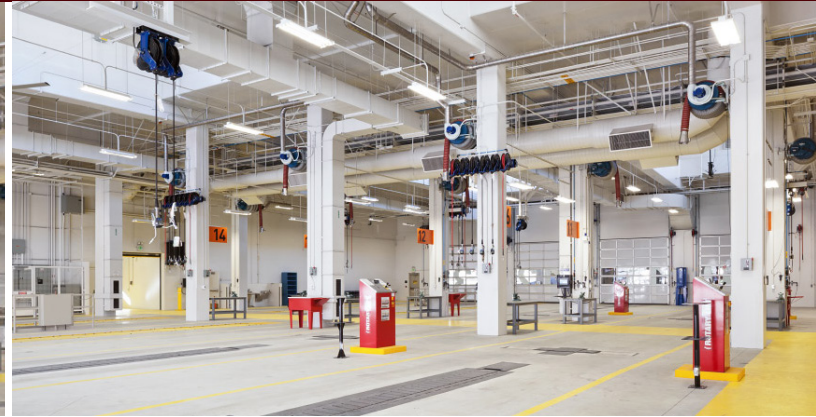
The new Deluxe Auto Carriers located in Jurupa Valley, CA. Western Pump was selected to design and construct the Fueling Systems for this facility. Scope of work included all design, engineering, mechanical and electrical control systems for the installation of a commercial trucking fuel facility. Project included one (1) Aboveground Diesel Storage Tank, one (1) Aboveground DEF Storage Tank with piping and electrical under a 30' x 57' Cantilever Canopy.

PROJECT FEATURES

One (1) 12,000-gallon Aboveground Storage Tank (AST)
One (1) 4,000-gallon DEF Tank
Two (2) Submersible Pump Systems
Two (2) Under-Dispenser Containment (UDC) Sumps
One (1) DEF Dispenser with Stainless Steel Piping
One (1) High-Flow Diesel Dispenser Two (2) Remote Fill Stations
Fuel Management
Leak Detection and Monitoring Systems
LED Lighting
Commercial Vacuum

DELUXE
AUTO CARRIERS

METRO DIVISION 13 BUS MAINTENANCE FACILITY (Los Angeles, CA)



SCOPE OF WORK

BIM Coordination
Vehicle Service Equipment
Aboveground Storage Tanks
Process Piping Systems
Compressed Air System

SERVICES PROVIDED

BIM Drawings
BIM Coordination
Piping System Installation
Inspections
Project Close-out

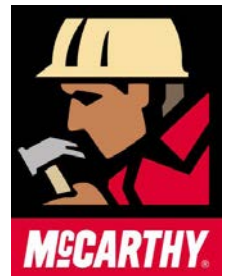
PROJECT FEATURES

Containment Solutions
Aboveground Storage Tanks (ASTs)
Balcrank Pneumatic Pump Systems
Graco Hose Reel Banks
Champion Air Compressors
TransAir Piping Systems

GENERAL CONTRACTOR

McCarthy Building Companies
Khatchig Tchapidarian Project Director
KTchapidarian@McCarthy.com
(949) 466-9770

SUBCONTRACT VALUE: \$800,000



PROJECT DESCRIPTION

The new LA Metro Division 13 Bus Maintenance and Operations Facility stands as one of the most advanced transit facilities in the nation. It includes a maintenance facility with 19 service bays for Metro's growing fleet and employee parking for 382 vehicles. As a subcontractor to McCarthy Building Companies, Inc., Western Pump was responsible for providing and installing vehicle service equipment, process piping systems, compressed air equipment, and compressed air piping systems.

CHALLENGES & RESOLUTIONS

Coordination of subcontractor trades is never easy, especially in a facility this complex. McCarthy's Project Execution Team implemented the use of Building Information Modeling (BIM) to accomplish this task. Western Pump participated in regular BIM coordination meetings to help identify conflicts prior to work being performed on-site during construction. A significant amount of time and money was saved, and a higher quality of work was produced by all subcontractors that were involved in this process.

BROWN FIELD BORDER PATROL STATION (Dulzura, CA) - Currently Under Construction



SERVICES PROVIDED

Vehicle Service Equipment Distribution
Fuel System Equipment Distribution
Tank Installation
Automotive Equipment Installation
Piping Installation
Fuel Dispenser Installation
Fuel Management System Installation
Fuel System Electrical
Start-Up & Initialization
Regulatory Inspections
Close-out Documentation

GENERAL CONTRACTOR: Western Pump

PROJECT DESCRIPTION

The Brown Field Border Patrol Station located in Dulzura, CA is in progress and nearing completion. The scope of work includes the installation of vehicle service equipment, an aboveground fuel system, fuel system electrical, and start-up and commissioning.

PROJECT FEATURES

Three (3) 240-gallon Double-Wall UL-142 Oil Tanks
One (1) 480-gallon Double-Wall UL-142 Oil Tank
One (1) Waste Oil Receiver
One (1) Waste Coolant Receiver
Six (6) Hose Reels
Three (3) Aboveground Two-Post Lifts
One (1) Four-Post Alignment Rack
One (1) Tire Changer
One (1) Tire Balancer
One (1) Work Bench Storage Combo
Two (2) 12,000-gallon UL-2085 Aboveground Storage Tank
One (1) 8,000-gallon UL-2085 Aboveground Storage Tank
Eight (8) Single-Hose Gasoline Dispensers
Two (2) Single-Hose Diesel Dispensers
Ten (10) Aboveground Conversion Frames
One (1) HIRT Vapor Recovery Burner System
Five (5) Fuel Management Systems
One (1) Tank Monitor and Leak Detection System
Fuel System Electrical
Testing, Start-Up, and Commissioning

LEGOLAND FUEL FACILITY (Carlsbad, CA)



SERVICES PROVIDED

- Tank Installation
- Piping Installation
- Fuel Dispenser Installation
- Fuel Management System Installation
- Start-Up & Initialization
- Regulatory Inspections
- Close-out Documentation

GENERAL CONTRACTOR: Western Pump

PROJECT DESCRIPTION

The LEGOLAND Fuel Facility is located in Carlsbad, CA. The scope of work included the installation of an aboveground fuel system and fuel management system.

PROJECT FEATURES

- One (1) 4,000 Gallon Aboveground Storage Tank (AST) w/ tank top equipment
- Two (2) Tank Mounted Dispensers
- One (1) Retractable Hose Reel
- Two (2) Interstitial Leak Detectors
- Two (2) Level Transmitters
- One (1) Control Panel
- One (1) Fuel Management System
- Testing, Start-Up, and Commissioning
- Services Provided:
 - Tank Installation
 - Piping Installation
 - Fuel Dispenser Installation
 - Fuel Management System Installation
 - Start-Up & Initialization
 - Regulatory Inspections
 - Close-out Documentation

SEAWORLD MAINTENANCE FACILITY (San Diego, CA)



SERVICES PROVIDED

- Permitting
- Fuel System Equipment Distribution
- Tank Removal
- Tank Installation
- Piping Installation
- Fuel Dispenser Installation
- Fuel Management System Installation
- Tank Monitor Installation
- Fuel System Electrical
- Start-Up & Initialization
- Regulatory Inspections
- Close-out Documentation

GENERAL CONTRACTOR: Western Pump

PROJECT DESCRIPTION

The SeaWorld Maintenance Facility underground storage tank replacement project located in San Diego, CA was completed in January of 2021. The scope of work includes permitting, petroleum dispensing equipment, an underground fuel system, a fuel management system, a tank monitoring system, fuel system electrical, and start-up and commissioning.

PROJECT FEATURES

- Department of Environmental Health and Local Fire Permits
- One (1) 10,000-gallon AB-2481 Double-Walled Underground Storage Tank
- One (1) Twin-Hose Twin Product Gasoline/Diesel Dispenser
- One (1) Fuel Management Systems
- One (1) Tank Monitor and Leak Detection System
- Fuel System Electrical
- Testing, Start-Up, and Commissioning

LOVE'S TRAVEL STOP & COUNTRY STORE (Bliss, ID)



SERVICES PROVIDED

Fuel System Design & Engineering
Fuel System Permitting
Procure Equipment
Canopy Installation
Tank Installation
Piping Installation
Pump Systems
Fuel System Electrical
Tank Monitoring System
Fuel Management System
DEF System
Tank Pad Installation
Drive Slab Installation
Flow Meter Calibration
Crash Protection
Decals & Signage
Start-up & Initialization
Regulatory Inspections
Record Drawings
Operation & Maintenance Manuals
Close-out Documentation

GENERAL CONTRACTOR: Western Pump

PROJECT DESCRIPTION

The Love's Travel Stop & Country Store located in Bliss, ID was completed and opened up its doors on December 17th. The scope of work included excavation and trenching, installation of the auto and diesel fueling areas, installation of the auto and diesel forecourt, all piping systems, installation of the monitoring system, all the fuel system electrical and testing, start-up, and commissioning of the site.

PROJECT FEATURES

Six (6) Underground Storage Tanks (USTs)
Underground piping and electrical
Twentyfive (25) fueling points
Nineteen (19) fueling dispensers
Two (2) canopies
Two (2) Multi-Compartment Underground Lube Tanks
Ten (10) Medium Pressure Oil Pumps
One (1) Grease Pump
One (1) Waste Oil Pump
Aboveground Product Pipe

QUIKTRIP 489 (Casa Grande, Arizona)



SERVICES PROVIDED

- Saw cut, breakout, remove concrete
- Tank Installation
- Piping Installation
- Fuel Dispenser Installation
- Tank Monitoring System Upgrade
- Drive Slab Installation
- Flow Meter Calibration
- Start-Up & Initialization
- Regulatory Inspections
- Close-out Documentation

GENERAL CONTRACTOR: Western Pump

PROJECT DESCRIPTION

The QuikTrip Store located in Casa Grande, Arizona is currently under construction and will be pushing to open soon! The scope of work included excavation, trenching, backfill, fuel system installation, testing, start-up, and commissioning.

PROJECT FEATURES

- Five (5) 15,000 Gallon Underground Storage Tanks (UST)
- Five (5) single-walled, turbine tank sump
- Ten (10) Gilbarco Encore 700s
- Underground Pipe Installation
- Back Fill Tank and Pipe Excavation
- Tank Monitoring System Equipment
- Testing, Start-Up, and Commissioning



09/24/2024

Letter of Introduction

Western Pump is a general and specialty contractor serving the petroleum and transportation industries, and mission critical infrastructure. Over the past eight decades, Western Pump has built a reputation as a single-source solution. We complete quality projects on time and within budget while providing unsurpassed services. Our expert teams are equipped with the required resources to build cost-effective projects while meeting demanding schedules and limited budgets. Western Pump's staff of professionals has a proven track record for delivering quality, reliability, exceptional customer service, reduced downtime, and peace of mind.

We look forward to partnering with the City of Porterville to provide turnkey upgrades to their existing fuel systems at the City Corporation Yard and Porterville Airport. I will include our statement of qualifications within our submitted documents which provides more information about our company.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Hendrick', with a long, sweeping horizontal line extending to the right.

John Hendrick
Account Executive
Western Pump, Inc
310-463-4276
jhendrick@westernpump.com





Quotation (CRM)

Sold To:			
QUOTE CITY OF PORTERVILLE 600 WEST GRAND AVENUE PORTERVILLE, CA 93257			
Job Location:			
CITY OF PORTERVILLE 600 West Grand Avenue Porterville, CA 93257			
Details:			
Quotation Number:	0000002791-002	Customer Code:	QUOTE
Quotation Date:	Sep 24, 2024	Customer Name:	CITY OF PORTERVILLE
Quotation Type:	Job	Reference:	RFP #24/25-SR1978
Sales Representative:	JOHNH	Cross Reference:	
Estimator:	ROBERTC	Expiration Date:	Oct 18, 2024
Job Number:	n/a		

Scope of Work:
FUEL MANAGEMENT SYSTEM PROJECT - Scope of Work and Quotation to replace Fuel Management Equipment and dispensers at The City of Porterville Fueling Facility located at 555 N. Prospect St. Porterville, CA 93257.

Western Pump, Inc. is pleased to offer the following Quotation:

SCOPE of WORK:

MAIN YARD

- Apply for and obtain permit with APCD. Permit fee up to \$1,000 included, additional fees will be billed at cost plus 10% and labor billed at \$100 per hour.
- Provide remote software setup with GO ENERGIES.
- Remove and properly dispose of five (5) existing Card Readers.
- Remove and properly dispose of four (4) existing fuel dispensers.
- Salvage two (2) existing Healy motors from unleaded dispensers.
- At CNG Dispenser provide and install one (1) Gasboy Islander Prime with EMV Card reader using existing conduit, electrical wiring and cellular modem (Note: Customer responsible for managed cloud firewall through PDI. This is required by NBS).
- At fuel dispenser island provide and install one (1) Gasboy Islander Prime using existing conduit, electrical wiring and cellular modem.
- Provide and Install three (3) Gasboy Islander Card Readers using existing conduit and electrical wiring at two gate enterances and one bus wash.
- Install Avalan point to point wireless antennas in Islander Prime at fuel island and each of the three Island Card Readers.
- Via Avalan wireless antennas, connect Island Card Readers to Islander Prime at fuel island.
- Connect to EKOS software cloud.
- Provide and install four (4) new Gasboy Atlas X fuel dispensers.
- Install salvaged Healy motors in new unleaded dispensers.
- Provide and install six (6) new hose retractors.
- Provide and install six (6) new sets of hanging hardware.
- Remove existing TLS350 tank monitor in Autoshop.
- Provide and install one (1) new Veeder Root TLS450Plus tank monitor using existing wiring, power, probes and sensors.
- Provide Gasboy certified ASC startup.
- Provide 400 mifare tags and programmer (tag programming by customer).
- Provide up to two (2) hours instruction on new equipment.
- Complete monitor certification pre-test.
- Complete monitor certification with local agency.

WESTERN PUMP

3235 F Street
San Diego, CA 92102
(888) 239-9988

www.westernpump.com



WESTERN
— PUMP —

-Clean up trash and debris caused by our work.

AIRPORT:

- Remove and properly dispose of one (1) existing Card Reader.
- Provide and install Gasboy Islander Prime EMV enabled fuel management system to control Credit Card transactions processed through the NBS network using existing power. (Note: Customer responsible for managed cloud firewall through PDI. This is required by NBS).
- Provide and install cellular modem in card reader. (Note: customer responsible for monthly cellular fess of \$65/mo. paid direct to Go Energies)
- Remove existing TLS350 tank monitor in Maintenance building.
- Provide and install one (1) new Veeder Root TLS450Plus tank monitor using existing wiring, power, probes and sensors.
- Provide up to two (2) hours instruction on new equipment.
- Complete monitor certification pre-test.
- Complete monitor certification with local agency.
- Clean up trash and debris caused by our work.

ADD OPTION AIRPORT DISPENSERS:

- Apply for and obtain permit with APCD. Permit fee up to \$1,000 included, additional fees will be billed at cost plus 10% and labor billed at \$100 per hour.
- Remove and properly dispose of two (2) existing fuel dispensers.
- Remove and properly dispose of two (2) existing above ground UDCs.
- Remove and properly dispose of two (2) hose reels and hardware.
- Provide and install two (2) Custom Bravo above ground UDCs.
- Provide and install 1 ea. Pump Measure Control AV Gas / AV Jet dispensers Using existing communication and power conduits and wiring. PMC Dispensers are fully self-contained w/ Meter, Display, DP-Filters , Hose Reel , Electric Retractors with Pulse Output.
- Provide and install 1 ea. 50' x 1" hose and nozzle and 1 ea. 50' x 1-1/2" hose and nozzle.

NOTES:

1. Installation and Training cost is based on 260 hours onsite for install and training. If additional time is required or requested efforts will be invoiced at DIR rate of \$185.00 per hour plus round-trip travel. (Note: Add Option increases onsite hours to 300).
2. Price excludes providing or installing any Main Electrical Panels (tying into existing).
3. Price excludes running any new wiring or cabling (electrical or communication).
4. Price excludes any/all additional Petroleum Equipment or Installation Work not specifically listed above.
5. Price excludes any/all Repairs to existing defective Equipment (Fuel Dispensers, Flow Meters, Electrical Wiring, Conduit, etc.).
6. Western Pump will not be held responsible for delays caused by the manufacturer, carrier, or any unforeseen events or actions.
7. Western Pump will not be held liable for unexpected cost increases and surcharges for materials and equipment prior to project start and will notify customer with proof for cost reimbursement.
8. Price is based on utilizing existing electrical wires and conduit runs. If additional work is required due to blockage, Western Pump will be compensated at a labor rate of \$185.00 per man hour plus materials.
9. Western Pump, Inc. shall be compensated for labor at \$185.00 per man-hour plus materials at cost plus 18% for additional work performed or delays caused by others.
10. Price includes payment bond and 55 required apprentice hours.

Code/Part #	Description	Qty.	Unit Price	Amount
	***SOURCEWELL MEMBER PRICING BELOW			
	CONTRACT #092920-GVR***			
	---EKOS SOFTWARE---			
EKOS-STARTUP	SETUP FEE, EKOS Software (One-Time)	1.00	E	
	REQUIRES monthly fee of \$179.00/Islander Prime paid			
	Direct To GO ENERGIES for EKOS Cloud Software.			
Z-FLH-ECM001	Cellular Modem	3.00	E	
	REQUIRES monthly cellular fee of \$65.00/Islander			
	Prime paid Direct To GO ENERGIES.			
Z-FL0-MTBL07	Mifare Tags, Black (box of 10)	40.00	E	
Z-FLH-PMTR01	FLEET HEAD OFFICE MIFARE TAG READER	1.00	E	

WESTERN PUMP

3235 F Street
 San Diego, CA 92102
 (888) 239-9988

www.westernpump.com



WESTERN
 — PUMP —

---CNG DISPENSER PEDESTAL---			
FL-CEH0IP-00	Islander PRIME, Electronic Cur Loop For Atlas X Models Includes Current Loop Board	1.00	E
Z-FL0-EMVCR2	CARD READER & PIN PAD, EMV -Generic EMV REQUIRES monthly fee paid Direct To PDI for Paysafe PCI Firewall Service.	1.00	E
Z-FL0-PRT008	PRINTER, Islander Prime	1.00	E
---FUEL ISLAND, GATES & BUS WASH---			
FL-CEH0IP-00	Islander PRIME, Electronic Cur Loop For Atlas X Models Includes Current Loop Board	1.00	E
FL-2MHICR-00	Island Card Reader PRIME 2 Mech	3.00	E
Z-FL0-PBS100	PEDESTAL BASE, Standard (No Charge)	3.00	
AX-9853T1-0D	DISPENSER, ATLAS X Twin 1 Prod SL 9853GXTW1 DF	2.00	E
Z-AT0-GLTL02	LIGHT (option), Atlas	2.00	E
Z-AT0-GVPP00	SLOWDOWN VALVE (option), Atlas (standard)	4.00	E
Z-AT0-AFI3MS*	FILTER, INTERNAL STANDARD 30 MIC	4.00	E
Z-AT0-GEMT0G	TOTALIZER, ElectroMechanical Gal	4.00	E
Z-AT0-HVS0D3	VAPOR RECOVERY KIT, Atlas	2.00	E
AX-9853S1-0D	DISPENSER, Atlas X 9853GX DF Single Product Side Load	2.00	E
Z-AT0-GLTL02	LIGHT (option), Atlas	2.00	E
Z-AT0-GVPP00	SLOWDOWN VALVE (option), Atlas (standard)	2.00	E
Z-AT0-AFI1MS	FILTER, INTERNAL STANDARD 10 MICRON	2.00	E
Z-AT0-GEMT0G	TOTALIZER, ElectroMechanical Gal	2.00	E
---AIRPORT CARD READER---			
FL-2MH0IP-00	Islander PRIME, 2 Mechanical Hoses (Gasboy) Fleet Systems with 4.3inch Multimedia Color Display, Built-in Web Server for Remote Maintenance, Contactless Tag Reader (ISO-14443), Self-contained w/Pedestal, Full Alphanumeric Vandal Proof 40-key Keyboard, Controls 32 Electronic Hoses, TCP/IP and RS-485 Communication, Controls 2	1.00	E

WESTERN PUMP

3235 F Street
 San Diego, CA 92102
 (888) 239-9988

www.westernpump.com



WESTERN
 — PUMP —

	Mech. Hose Outlets - expandable to 8		
Z-FL0-EMVCR2	CARD READER & PIN PAD, EMV -Generic EMV REQUIRES monthly fee paid Direct To PDI for Paysafe PCI Firewall Service.	1.00	E
Z-FL0-PRT008	PRINTER, Islander Prime	1.00	E
	---MISC PARTS---		
1360A	HEALY Wiring kit MC100 Atlas	2.00	E
Z071V	VP1000-Install Kit, Vapor	2.00	E
1404	MOUNTING KIT, Healy Universal	2.00	E
900-02G3 FS	NOZZLE, 900-series EVR Healy *New EVR/ORVR compatible, Full- Service, with Black Scuffguard	4.00	E
75B-085-S2S2-LP	HOSE, 8'6" VAC Assist w/S2xS2	4.00	E
8701VV	BREAKAWAY, Shear Pin VAC Assist	4.00	E
75B-010-S4F2-LP	HOSE, 12" VAC Assist w/S4xF2	4.00	E
159545-03	NOZZLE, 3/4" model-XS Diesel Green with 3-notch Hold Open Clip, Waffle Splash Guard, and Flo-Equalizer	1.00	E
000350	SWIVEL, 3/4" MxF 1+6 multiplane	1.00	E
002273	SAFE-T-BREAK, 3/4" FxF Single-Use	1.00	E
CP12WB04	HOSE, 3/4" x 4' MxM Wirebraid Black	1.00	E
CP12HW08	HOSE, 3/4" x 8' MxM Hardwall Black	1.00	E
CP16HW04	HOSE, 1" x 4' MxM Hardwall Black	1.00	E
CP16HW08	HOSE, 1" x 8' MxM Hardwall Black	1.00	E
177610-03	NOZZLE, 1"model-VIIIS w/Green Scuff 3-Notch Hold Open Clip, Waffle Splash Guard, and Spout Bushing	1.00	E
000087	SWIVEL, 1" MxF 1+6T multiplane	1.00	E
002276	BREAKAWAY, 1" FxF Reconnectable	1.00	E
610XB-0500 AR	HOSE RETRIEVER, 11'-13' hose sq Bs	6.00	E
GVR584EMVSU	WIRELESS IN DISP. UNIT AVALAN	3.00	E
GVR58EMVAP	WIRELESS FORECOURT ACCESS POINT PURCHASED FROM AVALAN	1.00	E
	VEEDER ROOT TLS450		
0860091-302	CONSOLE, TLS-450Plus w/Printer (Veeder-Root) with 8" WGA Color Touch Screen Display, 3 Ethernet & Dual USB/Exp., Dual RS-232/RS-485, UL/cUL	2.00	E
0333545-001	SOFTWARE, TLS-450 Plus Application	2.00	E
0332812-001	MODULE, Universal Sensor USM (Veeder-Root) for Probes, Sensors, and DPLLD (TLS-450Plus)	4.00	E

WESTERN PUMP

3235 F Street
 San Diego, CA 92102
 (888) 239-9988

www.westernpump.com



WESTERN
 — PUMP —

0332813-001	MODULE, Universal Input/Output UIOM (Veeder-Root) for Relay Control and Input Signal Monitoring (TLS-450Plus)	2.00	E	
	EQUIPMENT SUB TOTAL ---->			140,990.49
	LABOR, INSTALLATION & TRAVEL---->			78,325.00
	ADD OPTION			
	---AIRPORT DISPENSERS---			
FH-510-AV-2A-RT	FUELHOUSE DISPENSER	1.00	E	
	1. Liquid Controls model M5 Class 2 meter			
	2. 1" aviation grade hose reel w/ ELECTRIC rewind --capacity of 100' of 1" AVIATION HOSE (Not Included)			
	3. Retail Electronic display w/programmable pulse output			
	4. 1" 2-stage solenoid - Nickel plated brass w/ VITON Seals			
	5. All stainless steel / aluminum piping			
	6. Nozzle boot for OPW-295 style nozzle			
	7. Powder coated steel frame			
	8. Stainless steel panels			
FH515-AV-4A-RTL	FUELHOUSE DISPENSER	1.00	E	
	1. Liquid Controls model M5 Class 2 meter			
	2. 1-1/2" aviation grade hose reel w/ ELECTRIC rewind --capacity of 85' of 1-1/2" AVIATION HOSE (Not Included)			
	3. Retail Electronic display w/programmable pulse output			
	4. 1-1/2" 2-stage solenoid - Nickel plated brass w/ VITON Seals			
	5. All stainless steel / aluminum piping			
	6. Nozzle boot for OPW-295 style nozzle			
	7. Powder coated steel frame			
	8. Stainless steel panels			
VF-61EP1	VELCON 2 Filter Housing w. Filter	2.00	E	
	- Filter element for Aviation Fuel			
	- Differential Pressure Gauge			
	-Rated to 50 GPM			
	-Can be mounted internally to cabinet			
N/A	AGYWINGCRAFT150X50MXM HOSE 1.5"x50'	1.00		
N/A	AGYWINGCRAFT100X50MXM HOSE 1"x50'	1.00		
N/A	295SA0137 Aircraft Fueling Nozzle 1.5"	1.00		
N/A	295SA0135 Aircraft Fueling Nozzle 1"	1.00		
N/A	A6101-1 CUSTOM ABOVE GROUND CONTAINMENT BOX	2.00	E	
	AIRPORT DISPENSER HARDWARE SUB TOTAL---->			56,470.78
	AIRPORT DISPENSER LABOR, INSTALLATION &			16,865.00

TRAVEL--->

FREIGHT	1.00	3,200.00	3,200.00
SALES TAX (9.25%)	1.00	13,457.87	13,457.87
APPRENTICE HOURS	52.00	185.00	9,620.00
PAYMENT BOND - Estimated	1.00	4,000.00	4,000.00
ADD OPTION FREIGHT PMC DISPENSERS	1.00	1,250.00	1,250.00
ADD OPTION SALES TAX (9.25%)	1.00	5,072.70	5,072.70
ADD OPTION APPRENTICE HOURS	8.00	185.00	1,480.00

Summary:

SubTotal: 330,731.84

Total Quotation: 330,731.84

Notes:

- Prices stated are firm for 7 days from the date of this Quotation unless noted otherwise.
- Payment to be made as follows: 25% down payment, 25% job start, major equipment billed and due upon shipment from Vendor, final balance due immediately upon receipt and/or start-up and commissioning (unless credit terms have been pre-approved).
- Financing Terms: 100% financing may be obtained through available lease programs with terms from 24 to 48 months and will include any required deposit. To learn more about these options, please contact your WESTERN PUMP sales consultant.
- WESTERN PUMP, Inc. Standard Terms and Conditions (see below) will apply.
- WESTERN PUMP, Inc. Supplemental Conditions (see below) will apply.
- WESTERN PUMP, Inc. will not be liable for direct, indirect, special, or consequential damages, business interruption or loss of profits damages, sustained by Customer or any party claiming by, through, or under Customer.
- Customer hereby accepts the Terms and Conditions set forth within.
- Materials and equipment are subject to all applicable taxes.
- Cancellations or returns or non-stock or special order items are subject to a minimum 15% restocking charge, or may not be returnable.

**BY SIGNING AND ACCEPTING THIS QUOTATION,
 CUSTOMER ACKNOWLEDGES THAT HE/SHE HAS READ,
 UNDERSTANDS, AND AGREES WITH ALL OF THE
 TERMS AND CONDITIONS LISTED WITHIN.**

QUOTED BY:	ACCEPTED BY:	DATE:
SIGNATURE:	PRINT NAME:	
COMPANY NAME: WESTERN PUMP	TITLE:	
DATE: Sep 24, 2024	COMPANY:	

Standard Terms & Conditions:

- Acceptance.** This proposal, when accepted by Owner, will constitute a bona fide contract, subject to these terms and conditions, the supplemental terms and conditions, and approval of the Contractor's credit manager. Delivery of the materials/equipment herewith, installation of the specified equipment, Owner's acceptance hereof (either in writing or orally in person or over the telephone), and/or the issuance of an invoice, constitutes a binding acceptance by Owner of this proposal herein. This agreement is the entire undertaking of the parties for the subject matter hereof, and there are no promises, agreements, or understandings, oral or written, not specified herein.
- Prices; Terms of Sale; Credit.**
 - All prices are quoted in good faith; however, from time to time, manufacturers may change prices without prior notice prior to shipment, we may quote an incorrect price, or applicable taxes may increase, in which case any price or tax increase may be added to Owner's price.
 - All payments are to be made to Contractor pursuant to the terms on the Quotation. All credits and terms of the sale must be approved by Contractor's Credit Department at the time of the order and are subject to review and approval during the life of any contract. A finance charge of 1-1/2% per month (18% per year) may be charged on any unpaid balance remaining at the end of every 30-day period. If payment is not made promptly when due, Owner must pay all costs and expenses of collection, including reasonable attorneys' fees. Contractor may revoke any credit extended to Owner because of its failure to pay when due or for any other reason.

WESTERN PUMP

3235 F Street
San Diego, CA 92102
(888) 239-9988

www.westernpump.com



WESTERN PUMP

- c. Owner shall be responsible for and shall pay all sales, use, excise, governmental surcharge, and other taxes (including penalties and interest) levied in connection with this sale. The stated prices do not include applicable taxes unless otherwise specified, and Contractor may charge for same by a subsequent or supplemental invoice.
 - d. With respect to Owner-supplied materials, Owner agrees to indemnify and hold Contractor harmless from any and all defects or damages arising from use of these products. Owner further acknowledges that they will be wholly responsible for the payment of any sales and or use tax owed to the State(s) of California, Arizona, Nevada, New Mexico, Utah, Colorado, Idaho, Oregon, and/or Washington, and shall supply Contractor with proof of such payment prior to completion of the job or upon request.
 - e. Owner hereby grants and Contractor retains a purchase money security interest in said products/equipment, including the proceeds therefrom, for the purpose of securing Owner's obligation to make payment in full, until payment is received in full in cash or collected funds, at which time the security interest shall cease. Contractor may, at its option, repossess the products/equipment upon Owner's default in payment, and charge Owner with any deficiency. Owner agrees to execute upon demand appropriate financing statements for perfecting this security interest. If the work is to be performed on property not owned by Owner, upon Contractor's request, Owner shall provide a Landlord's Waiver in a form acceptable to Contractor.
3. **Delivery; Shipment Terms; Freight Damage Claims.**
- a. Shipping dates are approximate and are contingent of fire, accidents, strikes, floods, manufacturer production schedules, installation schedules and coordination of trades, transportation delays, or other causes beyond Contractor's control. Contractor will exert the utmost effort to perform satisfactorily its shipping obligations and meet installation schedules but shall not be liable for delay for any reason or for damage in transit of any materials furnished. Contractor may make delivery in installments, which will be separately invoiced.
 - b. The shipping terms, including the F.O.B. point (such as "shipper's dock" or a designated destination), must be indicated on the face of this proposal. The shipping terms should also include whether freight is "collect" or to be "prepaid and added". If these terms are not indicated, they may be chosen by the Contractor. Whenever merchandise is delivered to the designated F.O.B. point, a common carrier (by manufacturer or Contractor), or is received by Owner, whichever is earlier, Contractor's responsibility ceases and full risk of loss (including transportation delays and losses) and title passes to Owner, Contractor assumes no responsibility for goods damaged in shipment. Shortages and hidden damages or defects to goods must be reported to Contractor and carrier within 30 days of receipt of shipment. The quoted prices do not include the cost of unloading, which is Owner's responsibility.
4. **Insurance, Limited Warranty, Indemnity, and Hold Harmless.**
- a. Contractor does not extend warranties to Owner of materials and equipment. The products sold by Contractor may be warranted but only to the extent of any warranty offered by the manufacturer. Owner shall be responsible to register equipment warranties with the manufacturer. **CONTRACTOR HAS NO LIABILITY WHATSOEVER FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, DOWNTIME, LOSS OF MATERIAL OR PRODUCT, CLEAN-UP COSTS ASSOCIATED WITH LOSS OF PRODUCT, OR DAMAGE TO OTHER EQUIPMENT, UNLESS SAID DAMAGE OR LOSS IS PROVEN TO HAVE BEEN CAUSED BY CONTRACTOR'S SOLE NEGLIGENCE. NO WARRANTY IS EXTENDED WHERE EQUIPMENT IS IMPROPERLY INSTALLED BY OWNER, ITS EMPLOYEES OR CONTRACTOR. CONTRACTOR MAKES NOT OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS, OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY CONTRACTOR. FURTHER, NO WARRANTIES SHALL BE EXTENDED ON ANY USED EQUIPMENT OR PARTS UNLESS SPECIFICALLY ENUMERATED ON THE FACE OF THE CONTRACT.**
 - b. **CONTRACTOR EXTENDS A LIMITED WARRANTY FOR CONTRACTOR'S WORK PERFORMED UNDER THIS PROPOSAL THAT SUCH WORK WILL BE RENDERED IN ACCORDANCE WITH GOOD COMMERCIAL PRACTICE FOR A LIMITED PERIOD OF 90 DAYS FROM THE DATE OF CONTRACTOR'S COMPLETION OF SUCH WORK, HOWEVER, IF DURING THIS PERIOD, THERE IS A DEFECT DUE TO CONTRACTOR'S IMPROPER OR SUBSTANDARD PERFORMANCE, CONTRACTOR'S LIABILITY IS LIMITED TO THE COST OF CORRECTING ANY DEFECTIVE WORKMANSHIP. THIS LIMITED WARRANTY IS NULL AND VOID IN THE EVENT THAT THE OWNER OR A THIRD PARTY PERFORMS SUBSEQUENT WORK ON THE EQUIPMENT INSTALLED OR REPAIRED BY CONTRACTOR. IN THE EVENT THAT CONTRACTOR SHALL BE LIABLE TO OWNER FOR DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING BY NEGLIGENCE, INTENDED CONDUCT (BUT NOT INTENTIONAL MISCONDUCT) OR OTHERWISE, OWNER MAY RECOVER FROM CONTRACTOR ITS DIRECT DAMAGES NOT TO EXCEED THE AGGREGATE AMOUNT OF PURCHASE PRICE PAID BY OWNER FOR THE PARTICULAR GOODS OR SERVICES TO WHICH A CLAIM OF LIABILITY IS ASSERTED.**
 - c. Contractor shall have NO LIABILITY under this warranty if equipment malfunction or other problems result, directly or indirectly, from accident (not caused by Contractor), subsequent work on equipment by Owner or third party, improper operation of equipment, inadequate maintenance, and/or failure to properly protect the equipment from environmental hazards.
 - d. Owner agrees to hold Contractor harmless from and defend and indemnify it against any of Contractor's or Owner's losses in connection with any property damage, personal injury or death, whether same relates to any claim, penalty, or fine by government agency for pollution, environmental damage, clean up, or otherwise, or whether any claim is made by any third party against Contractor or Owner or said damage, personal injury or death is claimed or sustained by Owner or made against Owner or Contractor in connection therewith, including but not limited to damages, costs, expenses, and attorneys' fees, except to the extent that said damage, personal injury or death is proven to have been caused by Contractor's sole negligence. Where a penalty, fine or claim for pollution damage or cleanup is made against Contractor in connection with installation of materials and equipment, Owner agrees to hold Contractor harmless from and defend and indemnify it against same.
 - e. **NO EMPLOYEE OR REPRESENTATIVE OF CONTRACTOR IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY.**
 - f. When specifically included in the work, site drawings, installation plans, and as-built drawings will be prepared using a current Owner-provided set of scale drawings showing property lines, rights of way, easements, utilities, driveways, buildings and improvements. Any drawings furnished in connection with the bid proposal or Work were for bid purposes only and are the property of the Contractor. If such drawings are used without a professional or registered engineer's stamp, Owner uses it at its own risk with full and complete indemnity to Contractor for any acts, errors, omissions, or damages that may arise out of using such drawings.
 - g. Contractor shall maintain workers' compensation insurance covering its own employees. Unless otherwise specified, Owner shall maintain general liability, completed operations and builders' all risk insurance, and shall meet financial responsibility requirements of federal and state storage tank regulations sufficient to protect against claims that may arise under this proposal. Unless otherwise specified, Contractor shall not be required to obtain fidelity or surety bonds, and the cost of any such bonds may be added to the price.
 - h. Contractor, in furnishing services hereunder, is acting only as an independent contractor. Contractor does not undertake by this agreement or otherwise to perform any obligations of Owner, whether regulatory or contractual, or to assume any responsibility for Owner's business or operations.
5. **Cancellation and Return of Goods.** Owner may cancel an order only upon advance written approval of Contractor, provided Owner pre-pays the freight charges and Contractor's reasonable cancellation and restocking charges, based in part on manufacturer's charges. No merchandise is returnable without Contractor's advance written consent. Merchandise must be returned within ten (10) days of Owner's receipt of written authorization and must be accompanied by the invoice number and/or a copy of the sales receipt. At the option of Contractor, return of material prior to receiving Contractor's approval will result in material remaining the property of Owner, and it will be stored at Owner's risk and expense. If Contractor accepts the material in return for credit, a handling charge based in part on acceptance of the material for return by the manufacturer will be charged, and not credit will be issued to Owner until credit from the manufacturer is received.
6. **Governmental Compliance.** Environmental compliance is Owner's responsibility. Its failure to comply strictly with applicable federal, state, or local requirements, rules and/or regulations (including but not limited to those applicable to notice) shall completely void all express or implied warranties of Contractor. It is the Owner's responsibility to report any inventory shortage or suspected releases to federal, state, and all other authorities having jurisdiction and to Contractor or a certified tank handler within 24 hours of occurrence. Owner agrees to hold Contractor harmless from and indemnify and defend Contractor against any claims or liability relating to Owner's failure to comply strictly with all federal, state, or local environmental requirements, rules and/or regulations, including those applicable to notice. Unless otherwise specified herein, Owner or its agent shall furnish state fire marshal's permit, if required, and all other permits, licenses, inspection fees or approvals, whether required by federal, state, or local regulations. Owner shall register all new or replacement regulated storage tanks in accordance with applicable state and local regulations.
7. **Manufacturer Information.** Contractor will provide manufacturer's product information and installation instructions for informational purposes but makes no representations regarding such information.
8. **Testing.** Unless otherwise specified herein, Contractor shall perform testing required by governmental regulations concerning the installation of equipment installed by Contractor under this agreement (not including product testing). Any other required testing shall be responsibility of Owner, and all costs to perform said tests shall be paid by Owner unless otherwise specified in writing.
9. **Hardware/Software Compatibility.** In connection with this proposal, the parties assume that any fueling system hardware and software supplied by Owner is inherently compatible and requires only routine start-up and programming. If on start-up, it is discovered that the hardware and/or software is not compatible or has innate deficiencies that require additional configuration or upgrading, Contractor will be held harmless from any resulting delays in completion of work and shall be entitled to full payment of the Contract Price.
10. **Administrative Provisions.**
- a. **Changes.** This agreement may be amended at the request of either party from time to time by written Change Order signed by both parties, setting forth the particular changes to be made and the effect of such changes on the price and on the time of completion, subject to Contractor's approval.
 - b. **Recordkeeping.** Owner is responsible to keep daily accurate inventory records on products stored in tanks, lines, and dispensing equipment as required by law. In the event of an inventory discrepancy within 30 days from date of installation, Owner shall immediately notify Contractor followed by written confirmation. **IN NO EVENT SHALL CONTRACTOR BE RESPONSIBLE FOR DISCREPANCIES, CLEAN-UP OR RELATED COSTS INCURRED FOR SAID DISCREPANCIES PRIOR TO NOTIFICATION.**



- c. **Contingencies.** Contractor will be excused from performance under this agreement and will have no liability for any period it is prevented from performing any of its obligations, in whole or in part, as a result of delays caused by the Owner or a third party or by an act of God, war, fire, floods, winter conditions, manufacturers' production schedules, installation schedules and coordination of trades, delays in transportation, acts of government agencies, accidents, court order, labor dispute, third party performance or nonperformance, or other cause beyond Contractor's reasonable control, including failures or fluctuations in electrical power, heat, light, or telecommunications, and such nonperformance shall not be a default hereunder, or grounds for termination of this agreement.
- d. **Photographs, Drone Footage.** Contractor may take photographs and video recordings of all aspects of excavation and installation.
- e. **Surveys, Permits, Easements, Tap Fees, Etc.** Unless specified in the Contract Documents, Owner shall furnish all surveys and secure all building and sign permits. Easements for permanent structures or changes in existing facilities shall be secured by Owner, at Owner's expense.
- f. **Subcontractors.** Subcontractors may be employed by Contractor within its discretion to complete the Work. Contractor shall not be liable for damages caused by Subcontractors chosen directly by Owner. Owner agrees to refrain from entering into any contract or agreement with Subcontractor directly with regards to extras, omissions, or changes in connection with the work without the express written consent of Contractor.
- g. **Non-Discrimination.** Contractor hereby agrees that it will not discriminate against any individual with respect to any employment or terms of employment by reason of such individual's race, color, religion, sexage, or natural origin.
11. **Enforceability/Severability, Non-Waiver and Non-Assignability.** If any of the provisions hereof shall be deemed unenforceable by reason of law, the remaining provisions shall be deemed enforceable. Any waiver of a breach of this agreement shall not be construed as a waiver of the remaining terms of the contract. Owner may not assign this agreement or any rights hereunder, in whole or in part, without the prior written consent of Contractor.
12. **Governing Law.** All of the provisions hereof and of all resulting orders are to be governed and construed under the laws of the State of California, and the courts of said State shall have jurisdiction over any dispute concerning this agreement.

Supplemental Conditions:

1. **Change Orders.** Any change or modification to the original Contract must be in writing signed by both Contractor and Owner. If Contractor consents to a request for a change order, any such changes or modifications shall be incorporated, together with a full description of the changes and/or modifications covered thereby, on a written Change Order form to be executed by both Contractor and Owner. Owner shall be responsible for payment of any change orders net ten (10) days upon receipt of invoice.
2. **Qualifications of Work.** The following are excluded from the Contract Documents, unless specifically stated otherwise:
 - a. **Construction Services:**
 - i. Labor, materials, taxes, permits and outside services for mechanical compaction, electrical, blacktop, water and sewer work;
 - ii. Deadmen anchors, foundations, cathodic protection, and removal of tank contents.
 - iii. If concrete slab is placed and finished under this Contract, Contractor is not responsible for the performance of the slab if not protected from traffic by Owner for ten (10) days after completion of concrete work;
 - iv. In case of winter work, after October 15, Contractor shall do its best to provide all concrete work specified, however, no warranty shall be made as to the final condition of the concrete.
 - b. **Environmental Services - Soil Remediation:** In the event contamination is found, Contractor will contact Owner to discuss the extent of the condition and to decide upon a desirable course of action. Any expenses incurred as a result of contamination will be at the Owner's expense. Contractor shall not be responsible or liable for pre-existing pollution or contamination nor shall Contractor be liable for any pollution or contamination occurring through no fault of Contractor. The clean-up, removal, and disposal of such contamination shall be Owner's responsibility.
 - c. **Liquid/Sludge Removal.** Prior to tank removal, Owner shall have all product removed from the tank. In the event there is any liquid/sludge in a tank at the time of removal, Contractor may arrange for liquid/sludge removal on a time-and-material basis at Owner's expense.
3. **Payment Terms.** Unless otherwise specified in the Contract, all payments shall be paid in full by Owner net ten (10) days upon receipt of invoice by Owner. Major equipment shall be paid in full upon receipt of equipment at Contractor's warehouse or the jobsite, whichever shall occur first. For those projects requiring multiple construction draws, Owner hereby agrees that it shall have paid Contractor an amount not less than ninety percent (90%) of the total contract sum, including change orders, prior to Contractor providing the final certificate of occupancy and/or the start-up of major equipment. Any retainage, if any, shall be paid to Contractor within ten (10) days of completion of all punch list items.
4. **Protection of Work, Property, Persons.**
 - a. Contractor shall have no liability for damage, injury or loss to property or persons attributable to the fault of Drawings or Specifications, unless prepared by Contractor, or the negligent act or omission of Owner or Owner's agents, employees, or subcontractors.
 - b. Owner shall provide Contractor, prior to commencement of the work, Material Safety Data Sheets on all chemical products used by Owner in connection with the job site.
 - c. Owner shall provide Contractor, prior to starting the project, a Notice of Commencement filed with the Registrar of Deeds office in the county where the property is located.
5. **Limitation of Damages.** Contractor assumes no responsibility for, nor shall be obligated to pay, claims for any liquidated or consequential damages, including, but not limited to downtime, loss of business, etc.
6. **Delays.** Due to the increasing cost of labor and materials, any delay of progress not under Contractor's direct control and not due to causes within the control of the parties shall result in an additional charge to Owner. In the event of a suspension of services by Owner, the Contractor shall have no liability to Owner for delay or damage resulting from such suspension of services. When the project is resumed, the Contractor's bid shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of services. If Owner fails to make such payments, upon seven (7) days' written notice to Owner, Contractor may suspend services until such payment is received.
7. **Contractor's Right to Terminate the Contract.**
 - a. Contractor may, without prejudice to any other right or remedy, terminate the Contract if:
 - i. Owner is adjudged bankrupt or a receiver or trustee is appointed for Owner, or Owner is insolvent or makes a general assignment for the benefit of creditors;
 - ii. Owner fails to pay any amount when due;
 - iii. Owner materially breaches any of the provisions of the Contract Documents and does not remedy such breach upon notice by Contractor; or
 - b. Upon termination of the Contract by Contractor, Contractor shall have the right to remove equipment, tools and machinery owned by it from the job site, and shall be paid for all work done under the Contract, for all materials and supplies obtained by Contractor pursuant to the Contract and for all costs and expenses incurred by Contractor to date of termination, including any outstanding retainage, plus an additional amount equal to 15% of the amount payable to the Contractor under the Contract as a measure of Contractor's damage as a result of such termination.
8. **Excavating.** Excavation quotations are based upon normal soil conditions. In the event any underground structures, cables, conduit, debris, rock, water, running sand, frost, concrete foundations, poles, manholes, or similar non-visible obstructions are encountered, destroyed, or damaged during the performance of the Contract, Contractor shall not be held responsible. Should any non-visible obstructions or unforeseen underground conditions be encountered, removed, or destroyed, or if additional work is necessary to either preserve or destroy these unforeseen obstacles and to complete the excavation, such extra work shall be at Owner's expense. Such extra work shall be performed by Contractor on a time-and-material basis. If contaminated soil is encountered, Owner shall pay the additional cost for removal, disposal, and replacement. Owner shall also pay any fees incurred for a geologist, testing of the soil or other costs, penalties and fees related to the testing and cleanup of such contaminated soil. Finished grades are established and verified by Owner. If it becomes necessary to abandon the site of excavation, any expense incurred for work performed and additional work necessary to complete the Contract shall be borne by Owner. In the event of cave-ins, and the necessity to shore or slope hole, all associated costs with the removal of the excess soil and replacement with either sand or peagravel, will be considered an extra and all such costs shall be borne by Owner.
9. **Floating Tanks.** Unless otherwise specified in the Contract Documents, Owner will be responsible for providing the water/product to fill all underground storage tanks for ballast immediately upon setting tanks in excavations or uncovering existing tanks. Contractor shall notify Owner when water/product is needed. In the event tank is not filled as requested, Owner accepts responsibility and shall pay for any and all damages that may occur from tank floating, including equipment, labor, and material to reinstall tank. Removal of the tank ballast shall be at Owner's expense. Contractor shall not be responsible for the contamination or loss of the product used for ballast. In the event any tanks should float, Contractor shall be held harmless and shall not be responsible for the contamination or loss of the product used for ballast. All expense incurred to reinstall tanks or to clean up contamination or pollution shall be paid by Owner.
10. **Utilities.** Owner shall be responsible for disconnecting electrical lines and staking utilities, both private and public, if necessary, and assume all responsibility for damage during and after execution of Contractor's services. In no event shall Contractor be responsible for additional costs resulting from unknown property conditions. Owner or its agent will identify to Contractor the location of all boundary lines concerned for the completion of this Agreement. If Owner or his agent is incorrect in identifying said boundary lines causing additional expenses to be incurred by the Contractor for relocating or duplicating completed work because of its relation to the boundary line, the additional expenses will be borne by Owner. It shall be the responsibility of the Owner or its duly authorized representative to disclose the presence and accurate location of all hidden or obscure manmade objects relative to field tests or installations. If Contractor is cautioned, advised, or given data in writing that reveal the presence or potential presence of underground or overground obstructions, Contractor will give special instructions to its field personnel and subcontractors, however, all additional costs caused by the existence of the obstruction(s) shall be paid by Owner on a time-and-material basis. The Owner agrees to indemnify and save harmless Contractor and its subcontractors from all claims, suits, losses, personal injuries, death, and property liability, resulting from unusual subsurface conditions or damages to subsurface structures whose presence and exact locations were not revealed to Contractor in writing, and to reimburse Contractor expenses in connection with any such claims or suits, including reasonable attorneys' fees.

WESTERN PUMP

3235 F Street
San Diego, CA 92102
(888) 239-9988

www.westernpump.com



WESTERN PUMP

11. **Disposal of Contaminated/Hazardous Wastes.** Any hazardous or toxic wastes, pollutants, contaminants, or other waste materials encountered by or associated with services provided by Contractor on this project shall at not time be or become the property of Contractor. Arrangements for the treatment, storage, transport, or disposal of any waste materials which may be made by Contractor, shall be construed as being made solely and exclusively on Owner's behalf on a time-and-material basis. Owner shall indemnify, defend, and hold Contractor harmless from and against any and all liability which arises out of the treatment, storage, transport, or disposal of any waste materials. It is agreed and understood that any manifests or other forms required for the disposal of hazardous waste will be properly completed and signed by the Owner or a duly authorized representative. Owner hereby agrees to execute Contractor's Standard Release Form for the transfer of soils off-site which are not subject to State disposal regulations.
12. **Connections of Used Equipment or Piping.** Should the Work require connection to existing equipment or piping, or repairs of equipment, the Contract Price shall be increased for all additional costs that may arise in the event said equipment or piping is not fit for the intended application. In the event such items cannot be used, Contractor shall notify Owner upon discovery, and provide estimate of additional costs required to complete the installation or service.
13. **Siphon Work.** Siphon work is based on the site being equipped with an appropriate access point located within sixteen (16) feet from the original unused submersible opening. Any additional openings required to complete this work shall be performed on a time-and-material basis upon written change order. It is the Owner's responsibility to identify any underground obstacles, including but not limited to electrical, underground piping, or other such structures. Owner hereby releases and holds Contractor harmless from any and all costs associated from any damages to property, or persons which may occur as a result of said conditions.
14. **Miscellaneous Terms:**
 - a. **Title and Risk of Loss.** Contractor reserves the right to ship under reservation for payment against documents of title. Title and a first and prior security interest to the property herein shall remain with the Contractor until all payments are made and all conditions herein are and have been fully completed. Said property shall at all times be deemed personal property, even after attachment or connection to real estate. The Owner shall keep said property in good working condition and physical appearance free of liens, and until the purchase price is fully paid shall maintain such insurance on said property as shall be requested by the Contractor and shall name the Contractor as co-insured as Contractor's and Owner's interests shall appear and further shall forward to Contractor a copy of said policy.
 - b. **Taxes.** Owner shall be responsible for all federal, state, or municipal taxes, now or hereafter imposed in respect to Owner's ownership or use of the property, the production, treatment, manufacture, delivery, transportation, or proceeds of the products specified against such sales. Owner acknowledges and accepts its responsibility to remit all applicable taxes incumbent upon Owner due this transaction.
 - c. **Interest and Attorney's Fees.** Contractor shall charge Owner 1-1/2% per month (18% per annum) on past due balances. Owner agrees to pay Contractor attorney fees and costs incurred if its account is placed in the hands of an attorney for collection.
 - d. **Lien Rights.** To protect all parties, a mechanic's lien will be automatically filed where payment is not received according to the terms stated in this Contract. Upon payment in full by Owner, any said lien shall promptly be removed by Contractor.
 - e. **Sworn Statement and Lien Waivers.** With each application for payment, Contractor shall submit a Sworn Statement drawn and executed in accordance with the Construction Lien Act of the State of California, together with corresponding lien waivers from its subcontractors and/or suppliers verifying receipt of payment from Contractor.
 - f. **Assignability.** This Contract shall not be assigned by either of the parties hereto without the prior written consent of the other party.
 - g. **Non-Discrimination.** Contractor hereby agrees that it will not discriminate against any individual with respect to any employment or terms of employment by reason of such individual's race, color, religion, sex, age, or national origin.
 - h. **Governing Law.** The Contract Documents shall be governed by the laws of the State of California.

Western Pump, Inc. is a proud Distributor for:



Financing Available Through:



Geoff Smith (404) 915-9749
geoff.smith@patcapfinance.com

CITY OF PORTERVILLE ESTIMATED PROJECT SCHEDULE

Upon contracting with the city, apply for permit(s) and order equipment.

Once equipment and permits have been received, schedule job with City.

Job is estimated to take 3 weeks once onsite.

Rick Sanchez
Transportation Manager
Bellflower Unified School District
562-804-6500 x.6066
rsanchez@busd.k12.ca.us

Joshua Reece, P.E.
Project Manager
UCSD
Cell: 619-892-3735
jreece@ucsd.edu

Sam Anderson
Transportation Manager
Redlands Unified School District
(909) 307-5370
Sam_Anderson@redlands.k12.ca.us

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

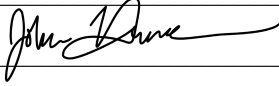
The Proposer acknowledges it has received and read the following Addenda:

Addendum # <u>1</u>	Signature <u></u>
Addendum # <u>2</u>	Signature <u></u>
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____

Company: WESTERN PUMP, INC.

Name: JOHN HENDRICK

Title: ACCOUNT EXECUTIVE

Signature: 

Date: 09/24/2024

Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☒ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

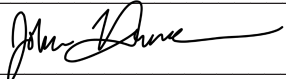
☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: WESTERN PUMP, INC.

Name: JOHN HENDRICK

Title: ACCOUNT EXECUTIVE

Signature: 

Date: 09/24/2024

Form E

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

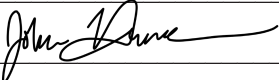
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: WESTERN PUMP, INC

Name: JOHN HENDRICK

Title: ACCOUNT EXECUTIVE

Signature: 

Date: 09/24/2024

Form B

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☒ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: WESTERN PUMP, INC

Name: JOHN HENDRICK

Title: ACCOUNT EXECUTIVE

Signature: 

Date: 09/24/2024

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF CALIFORNIA

COUNTY OF _____

John Hendrick declares and says:

1. That he/she is the (owner, partner, representative, or agent) of _____
Western Pump, Inc., hereinafter referred to as
(CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____
WESTERN PUMP, INC.

Name: _____
JOHN HENDRICK

Title: _____
ACCOUNT EXECUTIVE

Signature: _____


Date: _____
09/24/2024

Form F

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: WESTERN PUMP, INC.

Name: JOHN HENDRICK

Title: ACCOUNT EXECUTIVE

Signature: 

Date: 09/24/2024

Exhibit D

FTA Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention.** Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute,

FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; (b) exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (d) federal

transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.”
6. Equal Employment Opportunity for Construction Activities. When undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any

federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.

- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within

ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.

- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.
- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381);

- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL

Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.

- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.
- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from

receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.

- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S.

FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned

vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products

used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42

U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.

2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. **Environmental Justice.** Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic

Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.

7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that

maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject

data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting

system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.
3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and

administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to enter into General Services Agreement with Northern United Fence for Security Fencing Project

SOURCE: Public Works

COMMENT: The City of Porterville issued RFP No. 24/25-SR1979 on August 20, 2024, soliciting proposals for the installation of security fencing at the City's Corporation Yard. This project is funded partially by the Federal Transit Administration (FTA), ensuring compliance with federal requirements associated with FTA-funded projects.

Proposals were due on September 24, 2024, following a mandatory site visit on September 21, 2024, to familiarize vendors with the project requirements and site conditions. The City received proposals from eleven (11) qualified vendors, and the following vendors were evaluated and scored:

Vendor	Score
Northern United Fence	99
Yukon Fence	98
All Commercial	97
Pisor	95
All Steel	95
J&D Fence	95
San Joaquin Fence	95
Mars Fence	95
Anderson Fence	95
Roebblem Fence	95
CMW	90

Northern United Fence received the highest score, demonstrating a comprehensive understanding of the project scope and a competitive cost proposal. Northern United Fence's approach aligns with the City's objectives to enhance facility security with minimal disruption to City operations.

The total project cost is not to exceed \$150,000, in alignment with the Federal Transportation Improvement Program (FTIP) and the City's FTA

grant application CA-6260-2. The Security Fencing Project is funded at eighty percent (80%) by the FTA, totaling \$120,000 in federal funds, with the remaining twenty percent (20%), or \$30,000, covered by Local Transportation Funds (LTF). This budget structure is consistent with the project's federal and local funding allocations, ensuring full compliance with funding and project requirements.

RECOMMENDATION: That the City Council:

1. Approve the General Services Agreement between the City of Porterville and Northern United Fence for the Security Fencing Project at a total project cost not to exceed \$150,000; and
2. Authorize the Mayor, or designee, to execute the agreement and any related documents, subject to final review by the City Attorney.

ATTACHMENTS:

1. Porterville RFP # 24-25-SR1979_Plan Holders
2. RFP 24-25-SR1979 Scoring Matrix
3. NUF General Services Agreement
4. Exhibit A - RFP 24-25-SR1979 - Security Fencing - w Addendums
5. Exhibit B - Northern United Proposal
6. Exhibit C - FTA Terms and Conditions

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager

Plan Holders

Agency

Bid Number

Bid Title

City of Porterville

24/25-SR1979

Request for Proposals - Security Fencing

Name	Contact	Address	Phone	Email	Proposal	
					Yes	No
Montauk	Tracy R Kirby	41085 Elm Street, Murrieta, CA, 92562	(951) 813-2084	abdul@bidamerica.com		X
Pisor fence division Inc.	Jeremiah Alexander	PO Box 7213, Citrus Heights, CA, 95621	(916) 726-1173	jalexander@pisorfence.net	X	
All Commercial Fence, Inc.	Darlene Ramsey	650 Armstrong Way, Oakde, CA, 95361	(209) 845-8400	allcommercialfence@hotmail.com	X	
Goldenwest Fence	david winder	20741 Hansen Ave, Nuevo, CA, 92567	(951) 293-9503	david@goldenwestfence.com		X
Yukon Fence Co.	Joseph Rudnick	2810 Case St, Bakersfield, CA, 93308	(661) 325-2900	yukonfence@gmail.com	X	
All Steel Fence, Inc.	Tom Cornell, III	146 KLO Road , Lathrop, CA 95330	(209) 983-8409	bids@allsteelfenceinc.com	X	
Tulare Kings Counties Builders Exchange	Berenice Ruiz	823 W. Center Ave , Visalia, CA 93291	(559) 732-4568	bruiz@tkcbe.com		X
J & D Fence Company, Inc.	John Moore	PO Box 1846, Clovis, CA 93613	(559) 292-1692	sales@jdfencecompany.com	X	
San Joaquin Fence	Luigi Soper	1933 E. California Avenue , Bakersfield, CA 93307	(661) 322-9700	luigi@sjfence.com	X	
MARS FENCE INC	MANUEL GONZALEZ	PO Box 8464, FRESNO, CA 93727	(559) 200-8031	GONZALEZ.MENO17@GMAIL.COM	X	
Anderson Fence Company	Craig Brumley	770 S. Main Street, Porterville, CA 93257	(559) 784-2112	andersonfence@sbcglobal.net	X	
CMW Builders	Clint Wood	PO Box 613, Hilmar, CA 95324	(209) 535-0353	clint@cmwbuildersinc.com	X	
Northern United Fence	Ramiro Santivanes	2433 Fruitvale Ave, STE. 7, Bakersfield, CA 93308	(661) 558-4283	northernunitedfence@outlook.com	X	
Roebbelen	Kenneth Wenham	1241 Hawks Flight Court, El Dorado Hills, CA 95762	(916) 939-4000	bd@roebbelen.com	X	

RFP 24/25-SR1979
Security Fencing
Scoring Matrix

	Points	Pisor	All Commercial	Yukon	All Steel	J&D	San Joaquin	MARS	Anderson	CMW	NUF	Roebbelen
Understanding of the Scope of Work	20	20	20	20	20	20	20	20	20	20	20	20
Demonstrates a clear understanding of the services required.												
Technical Approach and Methodology	20	20	20	20	20	20	20	20	20	18	20	20
Proposal outlines a comprehensive and feasible approach to providing the required services.												
Experience and Qualifications	20	19	19	19	19	19	19	19	19	18	19	19
Firm's experience with similar projects, particularly federally funded transit projects												
Key Personnel and Project Team	10	10	10	10	10	10	10	10	10	10	10	10
Qualifications of key personnel who will be assigned to this project.												
Price Proposal	30	26	28	29	26	26	26	26	26	24	30	26
Competitive and reasonable cost in comparison to other proposals.												
Total Points	100	95	97	98	95	95	95	95	95	90	99	95

Proposed Cost	\$219,991	\$204,133	\$166,750	\$274,740	\$353,726	\$223,000	\$289,400	\$226,000	\$520,400	\$139,122	\$497,917
----------------------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------

**CITY OF PORTERVILLE
GENERAL SERVICES AGREEMENT WITH
NORTHERN UNITED FENCE FOR SECURITY FENCING**

This Security Fence Agreement (this "Agreement") is dated as of the ____ day of _____, 2024 (the "Effective Date") by and between City of Porterville, a charter city and municipal corporation ("City"), and Northern United Fence, a California corporation ("NUF"). The City and NUF may be referred to herein as a "Party" individually and the "Parties" collectively.

RECITALS

WHEREAS, on August 20, 2024, the City issued a Request for Proposals No. 24/25-SR1979 for the Security Fencing Project (the "RFP") as described in Exhibit A;

WHEREAS, on September 18, 2024, the City provided certain responses to questions submitted during the RFP process, as described in Exhibit B;

WHEREAS, on September 24, 2024, NUF submitted its proposal outlining its services, qualifications and technical capabilities for the installation of Security Fencing as described in Exhibit C;

WHEREAS, the City owns the Corporation Yard located at 555 N. Prospect Street, Porterville, CA 93257 (the "Facility") on property owned by the City (the "Property");

WHEREAS, the City desires for NUF to provide Services (hereinafter defined) at the Facility on the City's behalf, upon the terms set forth herein.

NOW THEREFORE, in consideration of the respective covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Term of Agreement.** The initial term of this Agreement shall commence on the Effective Date and end when the City Council accepts the project as complete. The initial term and any renewal terms are referred to herein as the "Term."

2. **License for Access to Facility.** The City hereby grants to NUF during the Term, a license for ingress, egress, and general access to the Facility and the Property to the extent necessary for NUF to perform the project (as defined below).

3. **Security Fencing**

(a) **NUF's Responsibilities.** The City hereby engages NUF as the exclusive service provider for the products and services at the Facility as described in Exhibit A, attached hereto, and to perform certain other services relating to the Facility, as described in Exhibit B, attached hereto, (collectively, the "Services"), all on the terms and conditions and as more fully described in this Agreement. NUF hereby accepts such engagement and agrees to perform the Services in accordance with the terms and conditions of this Agreement.

(b) **Fees.** As consideration for providing the Services under this Agreement, the City shall pay NUF the amounts set forth in Exhibit B attached hereto, with total payments not to exceed \$150,000.

(c) **Service Guidelines.** NUF shall provide the Services in material compliance with any and all Applicable Laws. For purposes of this Agreement, "Applicable Law" shall mean (a) all applicable federal, state, and local statutes, laws, requirements, decrees, ordinances, and codes, of all governmental authorities, including any federal, state, and local governments or any departments, bureaus, or agencies thereof having jurisdiction over the Property or the Facility; and (b) all other applicable rules, regulations, interpretations, and orders of any commissions, boards, agencies, or other legislative, executive, judicial, or other governmental or quasi-governmental bodies or officers having jurisdiction to regulate or supervise the Property or the Facility.

(d) **Training of Personnel.** NUF shall be responsible for the selection and training of all NUF employees or contractors that perform Services pursuant to this Agreement. All personnel employed or controlled by NUF shall be appropriately trained and shall comply with all applicable safety processes and procedures standard for the services at the Facility as described in Exhibit A.

(e) **Permits and Approvals.** The City shall, at the City's cost, be responsible for obtaining and maintaining any licenses, permits, or approvals required to operate and maintain the Property and the Facility, except for any such licenses, permits or approvals that NUF is legally required to obtain in its name in connection with its provision of the Services.

(f) **Property Conditions.** If, at any time during the Term, it is determined that underground hazards, soil contaminants and/or soil conditions exist (including, without limitation, migratory pollution or other migratory conditions) that were not brought to the Property by NUF and that either (a) require removal, replacement, and disposal of soils or materials, (b) require remediation, or (c) require unanticipated soil or foundation preparation work, NUF shall not be financially and/or legally responsible for such underground hazards, soil contaminants and/or soil conditions and any required remediation, removal, replacement preparation work, and/or disposal. If the City does not commence, within ten (10) days after discovery of any such underground hazard or soil contaminant or soil condition, and thereafter diligently prosecute to completion the correction of such condition, NUF may, without further obligation or penalty, terminate this Agreement by written notice to the City, and the City shall pay NUF all amounts which accrued up to the date of the termination and reimburse NUF for any and all reasonable costs related to the repair and maintenance of the Facility, paid or irrevocably committed to by NUF prior to the date of the termination. This Section shall survive the termination of this Agreement.

4. **The City's Obligations and Responsibilities.**

(a) **Maintenance of Property.** The City shall be responsible for and shall at its own expense maintain the surrounding Property in the vicinity of the Facility.

(b) **Payment of NUF Billings.** The City shall pay each invoice submitted by NUF within thirty (30) days following receipt of the invoice by the City. For purposes of this

Section, receipt shall be defined as the day the invoice is transmitted by NUF. Any payments not made when due shall accrue interest on the unpaid amount at a rate of 10% per annum, calculated from the date payment is due to and including the date payment is received by NUF. **IF PERMITTED BY LAW, NUF SHALL PASS THROUGH TO THE CITY ANY SURCHARGES INCURRED BY NUF RELATED TO THE CITY'S PAYMENT OF ITS INVOICES THROUGH USE OF A CREDIT CARD.**

In the event that the City fails to make payments in a timely manner or fails to meet NUF's continuing credit approval, NUF may suspend any and all services provided under this Agreement, until such time as the City brings payments current and meets NUF's continuing credit approval.

(c) **Compliance with Law.** In performing its obligations under this Agreement, the City shall comply in all material respects with all Applicable Laws.

(d) **Materials.** In the event that the City has required NUF to store materials on the Property for the Facility, upon the expiration or termination of the Agreement, the City shall purchase all materials stored on the Property by NUF at such time at a mutually agreeable price no less than documented NUF's purchase price.

5. Termination.

(a) **For Convenience.** The City may terminate this Agreement, in whole or in part, at any time for its convenience and without cause by providing NUF with thirty (30) days' written notice. In the event of such termination, the City shall be liable only for payment for services satisfactorily rendered and expenses incurred up to the effective date of termination. NUF shall not be entitled to any other form of compensation, including for anticipated profits or unperformed services.

(b) **For Default or Breach.** Either Party may terminate this Agreement for default if the other Party: (a) becomes insolvent; (b) files any proceeding in bankruptcy, or acquires bankruptcy status; (c) has a receiver or receiver manager appointed with respect to it or any of its assets; or (d) seeks the benefit of any statute providing protection from creditors. Either Party may also terminate this Agreement for breach if the other Party materially breaches any provision of this Agreement provided: (i) the non-breaching Party provides the breaching Party with written notice of breach and a thirty (30) day period within which to cure such breach ("Cure Period"); and (ii) the breaching Party fails to cure each such breach within the Cure Period provided, however, that where it is not commercially reasonable to fully effect a cure to the other Party within the thirty (30) day period set forth above, the Party in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such thirty (30) day period and thereafter proceeds diligently to cure the breach to the reasonable satisfaction of the non-breaching Party. Any termination of this Agreement shall be without prejudice to each right and/or remedy which the non-breaching Party may possess against the breaching Party under this Agreement, at law, in equity, and/or otherwise. In the event of termination, the City shall pay NUF all amounts which accrued up to the date of the termination and reimburse NUF for any and all reasonable costs related to the repair and maintenance of the Facility, paid or irrevocably committed to by NUF prior to the date of the termination. The preceding sentence shall survive termination of this Agreement.

6. **Ownership of Facility and Improvements.** As between NUF and the City, all right, title, and interest in and to the Facility and any improvements made to the Facility shall at all relevant times remain with the City. The City retains all rights in and to the Facility and any improvements thereon.

7. **Warranty.**

With respect to services performed by NUF pursuant to this Agreement, for a period of one (1) year from the date of performance of such services (the "Warranty Period"), NUF warrants to the City that the services shall be free from defects in workmanship (the "Warranty").

If the City gives NUF prompt written notice of breach of this Warranty during the Warranty Period, NUF shall, at its sole option and as the City's sole remedy, either re-perform the service (the City to provide NUF with unencumbered access to the Property and equipment) or refund the purchase price therefore. The City shall bear the costs of access for NUF's remedial Warranty efforts (including removal and replacement of systems, structures or other parts of the City's facility), de-installation, re-installation and transportation of the parts to NUF and back to the City. If NUF determines that any claimed breach is not, in fact, covered by this Warranty, the City shall pay NUF its then customary charges for any re-performance completed by NUF, or, in the event NUF refunded the City the purchase price, the City shall return the purchase price to NUF. NUF's warranty is conditioned on the City's (a) operating and maintaining the applicable work in accordance with NUF's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to NUF. NUF's warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by NUF). Warranty repair or replacement shall not extend or renew the applicable Warranty Period.

With respect to equipment, part(s) or material(s) provided by NUF to the City pursuant to this Agreement, NUF hereby assigns to the City, to the extent assignable, any warranties made to NUF by the applicable manufacturer or supplier, and NUF shall have no other liability to the City related to the supplied equipment, part or material under warranty, tort or any other legal theory.

THE WARRANTIES SET FORTH IN THIS SECTION ARE NUF'S SOLE AND EXCLUSIVE WARRANTIES. NUF MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT.

8. **Indemnification.**

(a) NUF hereby agrees to indemnify, hold harmless and defend the City, and its officers, directors, employees and agents (collectively, the "City Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the City Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) NUF's material breach of any representations,

covenants or warranties of NUF set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of NUF, its employees, officers, owners, directors or agents in the performance of this Agreement; or (c) the material violation of any law, ordinance or regulation by NUF. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the City Indemnitees.

(b) The City hereby agrees to indemnify, hold harmless and defend NUF, and its officers, directors, employees and agents (collectively, the "NUF Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the NUF Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) the City's material breach of any representations, covenants or warranties of the City set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of the City, its employees, officers, owners, directors or agents in the performance of this Agreement; (c) the material violation of any law, ordinance or regulation by the City; or (d) any pre-existing or migratory environmental condition or hazard. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the NUF Indemnitees.

9. Insurance Requirements.

The City and NUF shall each procure at their respective expense, and maintain in full force and effect during the Term of this Agreement, including any renewals, with insurance carriers rated at least A- VII or Better in A.M. Best's Insurance Report and admitted to do business in the state where the Facility is located, the following primary insurance in at least the minimum amounts specified, with the other respective Party named in the commercial general liability policy (or excess liability or umbrella liability policy, if applicable) and the automotive liability policy as an additional insured and including a transfer of rights or waiver of subrogation endorsement. Such insurance, excluding workers compensation, shall be endorsed to require at least thirty (30) days' written notice to the other respective Party of cancellation.

(a) Commercial General Liability Insurance, including coverage at least as broad as the latest version of the Insurance Service Office Commercial General Liability coverage (occurrence form CG001) to a combined single limit of not less than \$1,000,000. Excess liability or umbrella liability coverage may be used to evidence or provide limits in addition to primary limits of no less than \$1,000,000 on the commercial general liability policy.

(b) Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of \$1,000,000.

(c) Workers Compensation and Employers Liability

(i) Workers compensation in compliance with applicable state and federal laws.

(ii) Employers liability with a limit of not less than \$1,000,000.

The requirements for carrying the foregoing insurance shall not derogate from the provisions of indemnification as set forth in this Agreement. If a Party maintains higher limits than the minimums shown above, the other Party requires and shall be entitled to coverage for the higher limits maintained.

The City shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

NUF
2433 Fruitvale Ave Ste 7
Bakersfield, CA 93308
Attn: Ramiro Santivaner
Phone: (661) 558-4283
Email: northernunitedfence@outlook.com

NUF shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

City of Porterville
555 N. Prospect St
Porterville, CA 93257
Attn: Richard Tree
Email: rtree@ci.porterville.ca.us

10. Assignment. Neither Party shall have the right to assign its rights or obligations hereunder, in whole or in part, without obtaining the prior written consent of the other Party and any attempted assignment without such prior written consent shall be void. Permitted assigns shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

11. Liens. The City represents that it is the owner of the Property and has full authority to enter into this Agreement. So long as the City is not in breach of any term of this Agreement and has timely paid all of NUF's invoices, then NUF shall make timely payment to all contractors performing work on behalf of NUF and shall, at its expense, cause any lien filed by any contractor performing work on behalf of NUF to be canceled or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise within thirty (30) days after NUF receives actual notice of the filing of such lien, charge, or order for the payment of money.

12. Relationship of Parties. NUF and the agents and employees of NUF in the performance of this Agreement shall act in an independent capacity as independent contractors and not as officers or partners or employees or agents of the City.

13. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the State of California.

14. Attorneys' Fees. In the event of any litigation between the Parties concerning any provision of this Agreement or the rights and obligations of any party in relation thereto, the prevailing Party shall be entitled to an award for all costs incurred by reason of such litigation,

including but not limited to reasonable attorneys' fees and fees and expenses of witnesses. The trier of fact shall designate the prevailing Party.

15. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by certified mail, return receipt requested, or overnight courier or facsimile to the other Party at such address as set forth below:

If delivered to City:

City of Porterville
Attn: Richard Tree
555 N. Prospect St
Porterville, CA 93257
Email: rtree@ci.porterville.ca.us

If delivered to NUF:

NUF
2433 Fruitvale Ave Ste 7
Bakersfield, CA 93308
Attn: Ramiro Santivanos
Phone: (661) 558-4283
Email: northernunitedfence@outlook.com

Each Party shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other Party. Without limiting any other means by which a Party may be able to prove that a notice has been received by the other Party, a notice shall be deemed to be duly received:

- (a) if sent by hand, the date when left at the address of the recipient;
- (b) if sent by certified mail, the date of the return receipt;
- (c) if sent by overnight courier, the date when receipt is acknowledged at the address of the recipient; or
- (d) if sent by facsimile, the date of the confirmation.

16. Force Majeure. If either Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, interruptions in utility services, the cessation of providing necessary products or services to NUF by any supplier to NUF, labor disputes, catastrophic equipment failures due to extraordinary events beyond the control of NUF, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party

claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from any payment obligations hereunder.

17. Limitation of Liability. Neither Party shall have any liability to the other Party for special, consequential, or incidental damages, except however in connection with a claim made against either Party by a third party, provided that such claim arises out of or results from the negligence or willful misconduct or any other claim within the scope of the indemnity obligations of NUF or the City, as applicable, under this Agreement.

18. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties, and is not intended to create any benefits to any third parties.

19. Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

20. Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

21. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

22. Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

23. Representation regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

24. Incorporation of FTA Terms. The preceding provisions, as described in Exhibit C, include in part certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT) Federal Transit Administration (FTA), whether or not expressly set forth in this Agreement. All contractual provisions required by FTA are hereby incorporated by reference, and any conflicts between FTA requirements and other contract provisions shall be resolved in favor of FTA requirements. NUF shall not perform any act or fail to perform any act that would cause the City to be in violation of FTA requirements.

25. Order of Precedence. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (i) Exhibit C (FTA Terms and Conditions); (ii) the body of this Agreement, (iii) Exhibit A (RFP 24/25-SR1979 and Addendums), and (iv) Exhibit C (NUF Proposal).

26. Miscellaneous. This Agreement, along with the exhibits and appendix attached hereto, constitutes the complete and exclusive agreement and understanding between the Parties and supersedes all prior communications and agreements, whether oral or written. The Parties expressly agree that there are no other agreements, understandings, restrictions, warranties, and/or representations by, between and among the Parties relating to the subject matter of this Agreement other than those expressly set forth herein or herein provided for. This Agreement may only be modified by an instrument that is executed by each Party's duly authorized representative. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which collectively constitute one (1) and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the Effective Date.

CITY OF PORTERVILLE

NORTHERN UNITED FENCE

By: Martha A. Flores

By: _____

Title: Mayor

Title: _____

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No. 24/25-SR1979 with Addendums
- B. Northern United Fence Proposal
- C. FTA Terms and Conditions

EXHIBIT A

RFP 24/25-SR1979 with ADDENDUMS

EXHIBIT B

NORTHERN UNITED FENCE PROPOSAL

EXHIBIT C

FTA TERMS & CONDITIONS



**CITY OF PORTERVILLE
REQUEST FOR PROPOSAL RFP No. 24/25-SR1979
SECURITY FENCING**



August 20, 2024

The City of Porterville does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities. It is the City's policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities.

The project is funded in part by the Federal Transit Administration Catalog of Federal Domestic Assistance (CFDA) 20.500 and 20.507. The City of Porterville reserves the right to reject any or all proposals.



**CITY OF PORTERVILLE, CALIFORNIA
REQUEST FOR PROPOSALS (RFP) NO. 24/25-SR1979
SECURITY FENCING**

SEALED PROPOSALS will be received by the Transportation Department located at 291 N. Main Street, Porterville, CA 93257, until 2:00 P.M. on Tuesday, September 24, 2024, for the Contract to provide Security Fencing.

A mandatory site visit is **REQUIRED** in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us. The site visit will be concluded on September 21, 2024, at 10:00 am.

This contract is federally funded and as such, the Federal Requirements associated with the performance of services under this contract have been included with this RFP. The awarded Proposer will be responsible for adherence to all local, state, and federal requirements listed herein. These requirements are hereby incorporated into the subsequent contract arising from this RFP.

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. All addenda and correspondence during the process will be handled electronically through the Public Purchase website.

The City has not established a DBE goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract. The City of Porterville overall DBE goal is 1% of total contracts (including subcontracts) awarded.

The City hereby affirmatively ensures that Minority Business Enterprises and Disadvantaged Business Enterprises (DBE) will be afforded the full opportunity to submit proposals in response to this notice. Individuals and/or entities submitting bids/proposals to the City of Porterville will not be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, gender, gender identity or expression, age, sexual orientation, or military or veteran status in any consideration leading to the award of contract.

The right is reserved by the City of Porterville to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Publication Dates:

August 20, 2024

Table of Contents

Section I - Instructions	4
Section II – Standard Terms and Conditions	14
Section III – Special Terms and Conditions	25
Section IV – Insurance and Indemnification	34
Section V - SCOPE OF WORK	38
Section VI – Federal Transit Administration (FTA) Terms and Conditions	40
Exhibit A – Required Forms	65
Exhibit B – Sample General Services Agreement	72

Section I - Instructions

RFP/Agreement Schedule

Event	Date of Event
RFP Available to the public	August 20, 2024
Required Site Tour	Pre-Scheduled
Deadline to submit questions	September 10, 2024
Proposal submittal deadline @ 2:00 pm PST	September 24, 2024
Short list established and vendors notified	October 3, 2024
Interviews/Presentation with short-listed vendors (if required)	October 9, 2024
Award of Contract @ City Council Meeting	October 15, 2024
Contract Begins	November 1, 2024

City's Vendor Self-Registration and Notification

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. No proposal shall be received from an individual or firm that has not accessed the proposal documents from the Public Purchase website. All addenda and correspondence during the process will be handled electronically through the Public Purchase website. Questions regarding this request for proposals must be submitted through the Public Purchase website.

Background

The City of Porterville ("CITY") is located in Tulare County, which is part of the Central San Joaquin Valley of California. The San Joaquin Valley is a rich agricultural area and Tulare County is recognized as the largest agricultural-producing county in the world.

Porterville has a land area of approximately 14.3 square miles (9,161 acres), situated at the base of the foothills of the Sierra Nevada Mountain Range. It is approximately 30 miles southeast of Visalia (the County seat); 60 miles northeast of Bakersfield, 165 miles northeast of Los Angeles, and 254 miles southeast of San Francisco. State Routes 65 and 190 bisect the community.

The Porterville City Council is the policy-making body for the City of Porterville's Transportation Department. It adopts the Short-Range Transit Plan, and through the annual budgetary process, establishes operational and funding levels for the system. The City Council also sets operational policies and parameters.

Management of the City's public transportation system, referred to as Porterville Transit, is an integrated function of the City of Porterville. The Transportation department is responsible for the overall management of the service. The City is also responsible for the maintenance of the transit fleet, through its Field Services Division.

The City outsources, to a private contractor, to perform daily operations of Porterville Transit. The Director of Transportation is responsible for the overall administration, planning, monitoring, and

marketing of the system. The Director of Transportation also acts as a liaison to the Tulare County Association of Governments (TCAG), the California Department of Transportation (Caltrans) and the Federal Transit Administration (FTA). The contracted local General Manager is responsible for the day-to-day operations management; the hiring, testing, training and supervision of all drivers and dispatch staff; fare collection; reporting; ridership data collection; and the operation of Porterville Transit vehicles in accordance with City policy and all State and Federal regulations. The County of Tulare contracts with the City of Porterville to provide transit service to unincorporated areas surrounding Porterville. The County reimburses the City for service provided to County residents using Local Transportation Funds (LTF).

Porterville Transit provides an array of transportation services in the form of fixed route bus services, ADA complementary paratransit, and innovative On-Demand services.

Preparation of Offer

1. Any person (“Proposer”) submitting a Proposal (“Proposal”) in response to this Request for Proposals (“RFP”) shall examine the Scope of Work carefully and be informed thoroughly regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract to be awarded under this RFP (the “Contract”). No allowances shall be made because of lack of knowledge of any specifications, conditions, or requirements of this RFP.
2. All forms provided must be completed and submitted with your Proposal.
3. It is permissible to copy submittal forms if necessary. Erasures, interlineations, or other modifications of the Proposal must be initialed in original ink by the authorized person signing the offer. No Proposal will be altered, amended, or withdrawn after the specified offer due date and time. The City is not responsible for Proposer’s errors or omissions.
4. All time periods stated as a number of days will be calendar days.
5. It is the responsibility of all Proposers to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after due date and time. Proposers are strongly encouraged to:
 - 1) Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 2) Study and carefully correlate Proposer’s knowledge and observations with the RFP document and other related data.

- 3) Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which a proposer has discovered in or between the RFP document and such other related documents.
- 4) The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Proposer is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- 5) Proposers are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Proposals offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 6) Proposers' responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products proposed. Proposals submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 7) Prices shall be submitted on a per unit basis by line item, when applicable. Failure to submit any unit pricing will be sufficient grounds for the City to consider the proposal to be non-responsive. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

Exceptions

Proposer must not take any exceptions to any terms, conditions or material requirements of this solicitation. Proposals submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Proposals must conform to all the requirements specified in the solicitation. The City encourages Proposers to send inquiries to the procurement officer rather than including exceptions in their Proposal.

Communications to City

All questions pertaining to this RFP, or any matters relating thereto the Scope of Work, or any questions pertaining to the RFP or RFP documents, shall be in writing and shall be submitted only through the Public Purchase website. Communications sent to any other person at the City or at any other address may, in the City's sole discretion, be deemed to be "non-responsive" and the

City in its discretion may elect to disregard any such questions. The City shall not respond to oral inquiries, and oral statements of any nature by the City or any of its representatives may not be relied upon for any purpose whatsoever.

Addenda

The City of Porterville will not be responsible for any oral instructions made by any employees or officers of the City of Porterville regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.

Business in California

The City will not enter contracts with Proposers (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of California, unless the proposer asserts a statutory exception prior to entering a contract with the City.

Licenses

If required by law for the operation of the business or work related to this Proposal, Proposer must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

Certification

By signing the Proposal, proposer certifies:

- The Proposer's submission of the Proposal did not involve collusion or other anti-competitive practices
- The Proposer shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Proposer has not given, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

Minimum Qualifications

- Proposer must have been in operation a minimum of five years.

Certificates of Insurance

Upon notification of a recommended award, the Proposer will have 14 calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive and responsible Proposer whose proposal, in the sole and absolute discretion of City, for providing the goods and/or services

contained in this solicitation, who have demonstrated the ability to perform in an acceptable manner, and is most advantageous to the City.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.

A response to a solicitation is a Proposal to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Proposals do not become contracts until they are executed by the Mayor. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual proposers or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under California Statutes, until the resulting contract(s) are awarded to all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Proposers may not discuss the solicitation with any City employees or evaluation panel members.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Porterville City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Proposals, the City Manager will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. **PROPOSERS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Proposer, regardless of whether the City responds to the contact. Proposers that violate this policy will be disqualified until the resulting contract(s) are awarded, or all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

Protest Process

In the event any person wishes to file a Protest regarding this RFP, such Protest shall be made in accordance with City’s FTA Procurement and Contract Administration Manual (which is available at www.ci.porterville.ca.us), the terms of which are hereby included herein by this reference. The City reserves the right to modify the terms of the protest procedure if it determines that such modification is in its best interest. Should there be any dispute between the City’s FTA Procurement and Contract Administration Manual and the provisions of this Section, the City in its discretion shall determine which provision governs.

By way of background, all Proposers understand and agree that the procurement process undertaken by virtue of this RFP is solely for the benefit of the City, and it is for the City to determine in its discretion which Proposal the City desires to accept. The City has provided for a Protest procedure not to grant any rights to any particular Proposer but, rather, to provide the City the opportunity to review and examine any information regarding any Proposal which it may not have fully evaluated. Thus, no Proposer has any legal right in connection with any Protest Proceeding and the City may, in its discretion, determine whether or not to reject any Protest.

In the event a Protest is rejected, the Proposer may appeal the rejection as set forth in the City’s FTA Procurement and Administration Manual or herein but, again, said appeal shall be decided by the City based upon what it determines to be in its best interest. As such, legal concepts (such as the California or Federal Rules of Civil Procedure and the Judicial Rules of Evidence) and other matters which may be applicable to judicial or other proceedings are not applicable to a Protest in accordance with the City’s FTA Procurement and Contract Administration Manual. In addition, the appeal process set forth in the City’s FTA Procurement and Contract Administration Manual is exclusive and upon the exhaustion of the appeal, no further appeal may be taken, or separate suit filed against the City.

By virtue of submitting its Proposal, any Protesting Party expressly agrees that its remedies are exclusively limited to the City’s Protest procedure set forth in the City’s FTA Procurement and Contract Administration Manual (as the same may be modified hereby) and that there shall be no appeal or litigation resulting from the final award of any Contract by the City. The foregoing is a material consideration in the consideration by the City of any Proposal.

Public Record

All Proposals submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to California State law. If a

Proposer believes that a specific section of its Proposal response is confidential, the Proposer will isolate the pages marked confidential in a specific and clearly labeled section of its Proposal response. A Proposer may request specific information contained within its Proposal is treated by the Procurement Officer as confidential provided the Proposer clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Proposers as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Proposer in writing of any request to view any portion of its Proposal marked “confidential.” The Proposer will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Proposer does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

Right to Disqualify

The City reserves the right to disqualify any Proposer who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the Proposer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Proposer waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City of Porterville or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Proposer.

Late Proposals

Late Proposals must be rejected, except for good cause. If a late Proposal is submitted, the Department will document the date and time of the submittal of the late Proposal, keep the Proposal and notify the Proposer that its Proposal was disqualified for being late.

Pre-Bid Meeting

A mandatory site visit is REQUIRED in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us.

Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award contracts.

Determining Responsiveness and Responsibility

Proposals will be reviewed for documentation of any required minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Proposals will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Proposals will render a Proposal nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a Proposal that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Proposer remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so in writing, the City may determine the Proposal to be nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by Contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Proposer be a responsible contractor. Responsibility includes the Proposer's integrity, compliance with public policy, skill, capacity, experience, record of past performance, financial and technical resources, and facilities for conducting the work to be performed.

The Procurement Officer will review each Proposal to determine if the Proposer is responsible. The City's determination as to whether an Proposer is responsible will be based on all information furnished by the Proposer, interviews (if any), any information at the City's request and information received from Proposer's references, including information about Proposer's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Proposer agrees to permit by submitting its Proposal, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Proposer's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Proposal.

Clarifications

The City may request written clarifications for such purposes as information gathering or eliminating minor irregularities in offers. Clarifications shall not otherwise afford the Offerors the opportunity to alter or change their offers.

Detailed Evaluation of Proposals and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the

overall consensus score. The overall consensus scores will determine the Proposer's rankings and which Proposals are within the Competitive Range, when appropriate.

Proposals Not Within The Competitive Range

The City may notify Proposers of Proposals that the City determined are not in the Competitive Range.

Discussions With Proposers In The Competitive Range

The City will notify each Proposer whose Proposal is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Proposer. Each Proposer so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Proposal. The Proposers in the competitive range may be required to provide a demonstration of their product.

Demonstrations - Proposers in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Porterville. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If a Proposal in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Proposer to remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so, the City may determine the Proposal is nonresponsive, and the City may revoke its determination that the Proposer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Proposer about other Proposals received in response to this solicitation. During discussions with Proposers in the Competitive Range, the City will not give Proposers specific prices or specific financial requirements that Proposers must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Proposers will not be told of their relative rankings before Contract award.

Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Proposer in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Proposal and make one BAFO.

If a Proposer's BAFO modifies its initial offer, the BAFO should include a "Change Log" identifying all modifications made to the Proposal. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Proposals. The City will adjust appropriately, at its sole discretion, the initial scores for criteria that have been affected by Proposal modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Proposal that is the most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to a Proposer whose Proposal is the highest rated and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

Section II – Standard Terms and Conditions

Contract Interpretation

Applicable Law

This Contract will be governed by the law of the State of California, and suits pertaining to this Contract will be brought only in Federal or State courts in Tulare County, State of California.

Contract Order Of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- Federal Terms and Conditions
- Special Terms and Conditions
- Standard Terms and Conditions
- Amendments
- Scope of Work
- Specifications
- Attachments
- Exhibits
- Instructions to Contractors
- Other documents referenced or included in the RFP

Organization – Employment Disclaimer

The Agreement resulting hereunder is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and will save and hold the City harmless with respect thereto.

Severability

The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

Non-Waiver of Liability

The City of Porterville as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable California law.

Parol Evidence

This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contract Administration and Operation

Records

All books, accounts, reports, files, and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Porterville office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

Discrimination Prohibited

Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The Contractor will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts.

Equal Employment Opportunity and Pay

For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts.

For a Contractor with more than 35 employees: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

Documentation: Contractors may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

Monitoring: The City shall monitor the employment policies and practices of Contractors subject to this article as deemed necessary. The City is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

Health, Environmental and Safety Requirements

The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
- A list of all federal, state, or local (EPA, OSHA, Tulare County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this Agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

Compliance With Laws

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent Contractor, the City assumes no responsibility for the Contractor's acts.

Continuation During Disputes

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by a California Court of competent jurisdiction.

Emergency Purchases

The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

Costs and Payments

General

Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Proposal.

Payment Deduction Offset Provision

Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

Late Submission of Claim By Contractor

The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

Discounts

Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

No Advance Payment

Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

Fund Appropriation Contingency

The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

Maximum Prices

The City will not be invoiced at prices higher than those stated in any contract resulting from this Proposal. Contractor certifies, by signing this Proposal that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Proposal and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

F.O.B Point

All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

Contract Changes

Contract Amendments

Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

Assignment – Delegation

No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

Non-Exclusive Contract

Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

Risk of Loss and Liability

Title and Risk of Loss

The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

Acceptance

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

Force Majeure

Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

Loss of Materials

The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

Contract Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

Damage to City Property

Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

Non-Exclusive Remedies

The rights and remedies of the City under this Contract are non-exclusive.

Default In One Installment To Constitute Breach

Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

On Time Delivery

Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.

Default

In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

Covenant Against Contingent Fees

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

Cost Justification

In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Proposal price is fair and reasonable.

Work Product, Equipment and Materials

All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

Contract Termination

Gratuities

The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

Conditions and Causes for Termination

This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Contractor will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

State and Local Sales and Use Taxes

In accordance with applicable state and local law, sales and use taxes may be applicable to this transaction. The state and local sales and use tax burden and legal liability to remit taxes are on the vendor that is conducting business in California and the City of Porterville. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or

application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. Once your proposal is submitted, the Proposal is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

Tax Indemnification

Contractor shall, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including sales and use taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

Tax Responsibility Qualifications

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of California for any License or Sales taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in California statutes relative to State Sales and Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the California State Department of Revenue to release tax information relative to California Sales and Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

Russia Sanctions

Executive Order N-6-22 – Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, which shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

Mitigation of Heat-Related Illnesses and Injuries in the Workplace

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to

prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

- Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.
- Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- Access to shaded areas and/or air conditioning.
- Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
- Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
- Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures, and how to report heat illness and injury to emergency medical personnel.

The Contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Contractor to ensure compliance by its subcontractors.

Section III – Special Terms and Conditions

Term of Contract and Option To Extend

The Contract shall commence on the date both the City and Contractor execute the Agreement (“Contract’s start date”), and end when the City Council accepts the project as completed (“Contract’s end date”).

Post Award Conference

A post award conference may be held by the City prior to commencement of any work. Contractor will be required to attend. The purpose of this conference would be to discuss critical elements of the work schedule, operational problems, the transition plan and procedures.

Estimated Quantities

Quantities listed are the City’s best estimate and do not obligate the City to order or accept more than City’s actual requirements during the period of this Contract, as determined by actual needs. It is expressly understood and agreed that the Contract is to supply the City with its complete actual requirement for the Contract period.

Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the City Council prior to the institution of the change

Alteration In Character Of Work

No changes in the scope, character, or complexity of work may be made by Contractor without first receiving approval by contract amendment properly defining and limiting the change. The City will not pay any claim for extra work done or materials furnished by Contractor except as provided in this Contract, and Contractor may not do any work or furnish any materials not covered by this Contract unless first approved by the City through contract amendment. Any such work or materials furnished by Contractor without prior contract amendment is Contractor’s sole risk, cost, and expense, and Contractor may not make any claim for compensation for any such work or materials.

Method Of Invoicing And Payment

The CITY will compensate Contractor for satisfactory and complete performance of work under the Contract at the prices set forth in the Contract, with no additional charges for equipment, supplies, overhead, travel or administrative support.

Contractor shall be paid monthly in arrears. On or before the 10th day of each calendar month, Contractor shall submit one (1) invoice to the City for services provided during the previous month and each invoice shall contain the date, contract number, supporting documentation, and invoice amount. Advance payments are not authorized. Payment may only be made for actual goods and/or services that have been received, less liquidated damages.

The invoice must contain the associated purchase order number on the invoice itself and must be free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the City will return the invoice to Contractor. Contractor shall promptly resubmit the revised invoice to the City. Failure to identify an error does not waive any of the City's rights. The City shall make every effort to process payment for the purchase of services within 45 calendar days after receipt and approval of a correct invoice.

Any prompt payment discounts offered must be clearly noted by Contractor on all invoices submitted to the City. Monthly invoice must be sent for review to the City's Project Manager. The City shall notify the Contractor if the invoice has been approved or if it requires additional documentation and/or correction.

Following invoice approval, Contractor will email the invoice in PDF format to ap@ci.porterville.ca.us, copying the City's Project Manager. Each PDF attachment will contain only one invoice, although multiple PDFs may accompany an email. The email will be in plain text format free of any signatures or images (jpeg, bmp, etc.).

A "remit to" address must also be on the invoice and must match the address on file with the City. Any changes to the remit to address must be updated by the vendor.

Key Personnel

Contractor shall maintain the Key Personnel identified in its proposal for a minimum of 24 months from the "Effective Date" of contract award by City Council unless they are no longer employed by Contractor. Contractor shall notify the City in writing prior to removing, reassigning, or appointing an individual from or to any Key Personnel position whether in an acting or permanent capacity. For all Key Personnel, Contractor shall fill vacancies with City approval within 45 calendar days of the vacancy, unless otherwise approved by the City in writing. All of Contractor's Key Personnel shall be assigned full-time (a minimum of 40 hours per week) to this project, unless otherwise approved in writing by the City. In the event one or more of Contractor's Key Personnel is permanently replaced, Contractor shall notify the City in writing at least 72 hours prior to the replacement date and time. The replacement personnel shall be subject to the City's prior approval in writing.

Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

Performance Interference

Contractor shall notify the City's Project Manager immediately of any occurrence and/or condition that threatens to interfere with the full performance of the contract and confirm it in writing within 24 hours.

Unsatisfactory Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the Scope of Work, or elsewhere in this Contract. The City shall decide all questions as to the quality and acceptability of any work performed under the Contract as monitored and documented by the City. If, in the opinion of the City, performance becomes unsatisfactory, the City shall notify Contractor. Contractor shall have a reasonable time to cure the unsatisfactory performance.

If the unsatisfactory performance is not cured within the time specified, the City may immediately correct or complete the work to its satisfaction and deduct the associated costs from any balances due or to become due to Contractor. Contractor will be liable for difference between cost to the City to complete the Work with other forces and the cost to the City for completion of the Work by Contractor per the contract. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

Employee Identification and Facility Access

Only authorized Contractor employees are allowed on the premises of City facilities. Contractor employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contractor or subcontractor employee.

Confidentiality

"Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the "Effective Date" of contract award by City Council, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential

Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Contract; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Contract; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Contract. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City's written request or expiration of this Contract, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Contract. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: fpc.gov/resources/glossary.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term “process,” “processing,” or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

When Contractor processes PII pursuant to the Contract, Contractor shall, at no additional cost to the City:

- (1) process PII only within the United States and only in accordance with the Contract and not for Contractor’s own purposes, including product research, product development, marketing, or commercial data mining, even if the City’s data has been aggregated, anonymized, or pseudonymized;
- (2) implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice. (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
- (3) not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
- (4) as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
- (5) take reasonable steps to ensure the competence and reliability of Contractor’s personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;

(6) maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Contract and applicable laws;

(7) allow the City or its authorized agents to conduct audit inspection during the term of the Contract, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section.

If Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Contract, Contractor shall notify the City without undue delay within 48 hours; and:

(1) provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

(2) take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

(3) cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

(4) not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available

to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- (1) require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information;
- (2) act on newly acquired information whether or not such information should have been previously discovered;
- (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- (4) object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Contract. Contractor will bear the costs of all inquiries requested by the City.

Contacts With Third Parties

Contractor or its subcontractors shall not contact third parties to provide any information in connection with the deliverables provided under this Contract without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Contract or any other prior or existing contract with the City, Contractor or its subcontractors shall promptly inform the City, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section shall survive the termination of this Contract.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

No Third Party Beneficiaries

The parties expressly agree that this Contract is not intended by any of its provisions to create any right of the public or any member thereof as a third-party beneficiary nor to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

Non-Disclosure

Contractor shall not disclose, without the City's prior written consent, any information in the performance of the Services under this Contract to any person, firm, corporation, association, or other entity other than persons in the City's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall Contractor make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation, or other entity, except the City.

Contractor agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by Contractor's relationship with the City. Contractor further represents to the City that, as an inducement to enter this Contract, Contractor will hold this information in trust and confidence for the City's sole benefit and use.

Further, there shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City.

Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Contract, then, and in that event, upon written demand, Contractor shall relinquish to the possession and control of the City its entire file related to this Contract and only those portions of said file deemed by the City to be not privileged shall be returned to Contractor pending the resolution of the existing or anticipated litigation.

Contractor agrees that the requirements of this Section shall be incorporated into any subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Contract or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Contract shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

Accrued Liabilities

Contractor shall be responsible for the payment of all liabilities to its employees accrued during the contract term, including but not limited to accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between Contractor and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by Contractor at the end of the contract term and no additional

compensation shall be provided by the City for such accrued liabilities. Contractor shall not have any obligation for the liabilities of the prior contractor to its employees.

Claims or Demands Against The City

Contractor acknowledges and accepts the provisions of the Charter of the City of Porterville pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in the Charter of the City of Porterville alters, amends or modifies the supplemental and complementary requirements of the State of California Notice of Claim statutes pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

Moreover, nothing in this Contract will constitute a dispute resolution process, an administrative claims process, or contractual term sufficient to affect the date on which the cause of action accrues.

Conflicts of Interest

Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Contract upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Porterville City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Contract without liability, including any such commission, percentage, brokerage or contingent fee.

The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Contract, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Contract, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in a California court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

Section IV – Insurance and Indemnification

Standard General Defense and Indemnification

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Porterville and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Porterville. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

Contractor’s Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this Section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors and Contractor may purchase such additional insurance as they determined necessary.

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

Commercial General Liability – Occurrence Form

General Aggregate - \$1,000,000

Products – Completed Operations Aggregate - \$1,000,000

Personal and Advertising Injury - \$1,000,000

Fire Damage - \$1,000,000

Each Occurrence - \$1,000,000

The policy must name the City of Porterville as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.

There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Porterville as an additional insured.

City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.

The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

UM/UIM Per Person Limit \$1,000,000

UM/UIM Per Accident Limit \$1,000,000

- The policy must be endorsed to include the City of Porterville as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Worker's Compensation and Employers' Liability

Workers' Compensation

Employers' Liability: Statutory

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Porterville.
- This requirement does not apply when a contractor or subcontractor is exempt, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

Property Insurance – Contractor’s Property and Equipment

Contractor must maintain all risk property insurance for Contractor’s personal property. The CITY will have no responsibility for any damage to Contractor’s personal property and Contractor’s property insurance must be endorsed to include a waiver of subrogation against the CITY.

Additional Insurance Requirements

Policies must include, or be endorsed to include, the following provisions:

- 1) On insurance policies where the City of Porterville is named as an additional insured, the City of Porterville must be an additional insured to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by Contract.
- 2) Contractor’s insurance coverage or self-insurance must be primary insurance and non-contributory with respect to all other available sources.
- 3) Coverage provided by Contractor must not be limited to the liability assumed under the indemnification provisions of the Contract.

Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Porterville.

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of California and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

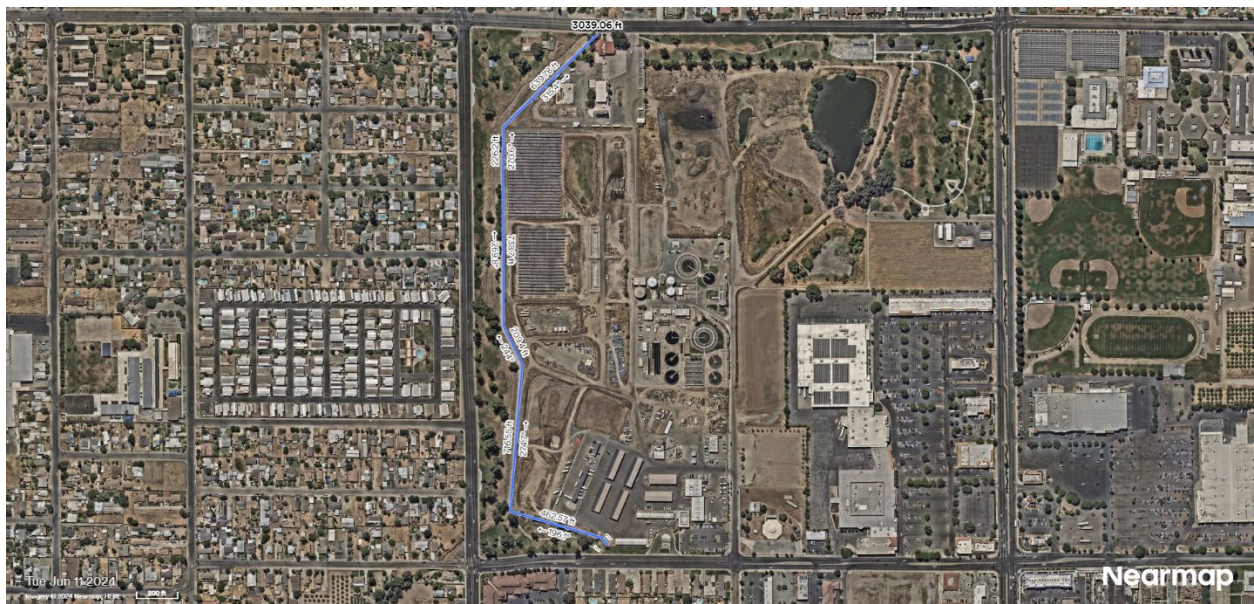
All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be mailed, emailed, or hand delivered to City of Porterville.

Section V - SCOPE OF WORK

The scope of work set forth in this Request for Proposals represents an outline of the goods and services which the CITY anticipates the successful Proposer to perform, and is presented for the primary purpose of allowing the CITY to compare proposals. The precise scope of work to be incorporated into the General Services Agreement shall be negotiated between the City and the successful Proposer. **The CITY requests that the Proposer suggest changes to the scope of work (as a part of the proposal) in order to achieve the CITY's Project Objectives.**

The City is seeking proposals to remove existing chain-link fencing and install new commercial grade privacy chain-link fencing. The length of fencing is approximately 3,000' and the project will be located at 555 N. Prospect St., Porterville, CA 93257 (map below).



General Specifications

1. Height: 8', no barbed wire overhang.
2. Fabric: Chain link, 2" mesh x 9 gauge to desired height. Manufactured from the highest quality galvanized wire. In accordance with ASTM-A392-81-Class 1.
3. Privacy Slats: 8', color can be brown, green, gray, or beige. High Density Polyethylene (HDPE)
4. Line Posts: 2 3/8" O.D. galvanized pipe complete with post tops. No barbed wire overhang arms. In accordance with ASTM-A120 Schedule 40 heavy wall.
5. Top Rail: 1 5/8" O.D. galvanized pipe coupled with slip on rail sleeves for every standard length generally 21" in length. In accordance with ASTM-A120 Schedule 40 heavy wall. The City desires to reuse existing top rail if possible.
6. Terminal Posts: End, Corner and gate posts: 3 1/2" O.D. galvanized pipe, furnished complete with all necessary bracing, fittings, etc. Gate posts for single gate panels over 16' wide and

double panels over 32' wide use 4 ½' O.D. pipe. In accordance with ASTM-A120 Schedule 40 heavy wall.

7. Bottom Wire: 9 gauge galvanized steel.
8. Post Spacing: Line posts are spaced in line fence, maximum 10' apart.
9. Post Footings: All line and terminal posts shall be set in concrete footings of the proper diameter and shape to ensure support.

Proposal Format

Proposals should be clear, concise, and provide detailed information concerning the Proposer's ability to successfully perform the obligations as described in the Scope of Work. All Proposals shall include the following documentation in the proposal package:

1. Cover Letter
 - a. Cover letter shall introduce the Proposer and establish interest in providing commercial grade chain link privacy fencing that meet the requirements of the City.
 - i. An individual duly authorized to commit resources on behalf of the Proposer must sign the letter.
2. Experience Statement
 - a. Indicate how many years of experience Proposer has in the installation of commercial grade chain link fencing.
3. Describe procedures in place to provide assurances that commercial grade chain link privacy fencing will meet the needs of the intended use for the City.
4. Provide a list of at least three (3) references, current or past customers; including company name, address, contact name, phone number, current email address that have purchased units similar to the City's request.
5. Provide a contract price proposal
6. Provide an estimated project schedule
7. Complete and submit all required forms

Section VI – Federal Transit Administration (FTA) Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in

addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention**. Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period**. Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records**. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance**. Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; (b) exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (d) federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
6. Equal Employment Opportunity for Construction Activities. When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the

preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.
- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.
- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall

continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.

- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381);
- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-

loading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working

conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee,

social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or

other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.
- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S.

Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.

- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.
- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then

FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility**. Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements**. Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver’s License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use**. Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving**. Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug

Use in Transit Operations” (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.

- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: (A) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (B) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; (C) telecommunications or video surveillance services provided by such entities or using such equipment; and (D) 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (b) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. Environmental Justice. Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental

Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order Nos. 11988 and 13690 relating to “Floodplain Management.”
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R. part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an

- academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by

the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.

G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C.

§ 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

The Proposer acknowledges it has received and read the following Addenda:

Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form B

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☐ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF CALIFORNIA

COUNTY OF _____

_____ declares and says:

1. That he/she is the (owner, partner, representative, or agent) of _____, hereinafter referred to as (CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form E

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form F

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form G

ACKNOWLEDGEMENT OF “BEST VALUE” SELECTION PROCESS

PROPOSER hereby acknowledges that the selection process under this RFP will evaluate Proposals on a “Best Value” basis, which the Federal Transit Administration’s (FTA) Best Practices Manual defines as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

As a result, PROPOSER further acknowledges that pricing will not be the sole basis upon which Proposals are evaluated.

An individual authorized to bind the PROPOSER to this Agreement must sign below acknowledging and understanding of the foregoing.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Exhibit B – Sample General Services Agreement

CITY OF PORTERVILLE GENERAL SERVICES AGREEMENT WITH *[insert full name of Contractor and Project Name and/or number]*

This General Services Agreement (Agreement) is entered into between the City of Porterville, a municipal corporation (**City**), and _____ [complete name of legal business entity], a _____ [business status, such as a California corporation] (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain Contractor to complete a XXXXXXXXXX Project (Project); and
- B. On XXXXXXXX, the City issued a Request for Proposals (RFP) for the XXXXXXXXXX (Project). On XXXXXXXX, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the goods and services.
- C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. _____-2024 approved by the Porterville City Council on _____, 2024.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall provide the goods and services required to complete the Project, described in Exhibit “A” attached hereto and incorporated herein by reference. The goods and services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: _____. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractor or subcontractor, without City’s prior written consent. The City may terminate this Agreement if Contractor makes any such change or replacement, or uses any unapproved subcontractor or subcontractor.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all

requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1. Term. The Term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6.

3. Compensation. City shall pay Contractor on a lump sum basis, at the billing rate set forth in Exhibit "C", attached hereto and incorporated herein by this reference for goods and services performed under this Agreement.

3.1. Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$ _____. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval. Notwithstanding anything contained herein to the contrary, the payment of any funds under this Agreement shall be subject to the City of Porterville's appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

3.2. Invoices. Contractor shall submit monthly invoice(s) to the City that describe the goods and services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Contractor.

3.3. Payment. Subject to the City acceptance of the Services as discussed in Exhibit A attached hereto and completion of the Project to the City's satisfaction, within 30 days after the City's receipt of invoice(s), City shall make payment to the Contractor based upon the services described on the invoice(s).

3.4. The acceptance by Contractor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Contractor for anything completed, finished or relating to Contractor's services. Contractor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Contractor or its employees, subcontractors, agents and subcontractors for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Contractor, its employees, subcontractors, agents and subcontractors.

3.5. Contractor agrees to maintain books, accounts, payroll records and other information relating to the performance of Contractor's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Contractor in the

performance of Contractor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

- 4. Indemnification.** Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In the event there is a finding and/or determination that Contractor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Contractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any all claims relating to or in connection with such a finding and/or determination.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

Contractor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

- 1. Insurance.** Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representative, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 1.1. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

- 1.2. Automobile Liability** (with coverage at least as broad as ISO CA 00 01 07 097, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 1.3. Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 1.4. Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.
- 1.5. Endorsements.** Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 1.5.1.** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 1.5.2.** For any claims related to this Agreement, Contractor’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor’s insurance and shall not contribute with it.
- 1.6. Notice of Cancellation.** Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.
- 1.7. Authorized Insurers.** All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 1.8. Insurance Certificate.** Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.
- 1.9. Substitute Certificates.** Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 1.10. Contractor’s Obligation.** Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

2. **Termination.** The City may terminate this Agreement in its sole and absolute discretion by giving ten (10) days' written notice to Contractor. Within five (5) days of such a termination, Contractor shall give the City all original documents relating to the Services in Contractor's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Contractor pursuant to this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
3. **Dispute Resolution.** If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:
 - 3.1. Each Party shall designate a senior management or executive level representative to negotiate the dispute.
 - 3.2. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority,
 - 3.3. If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 3.4. The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person to serve as the mediator, shall be commenced within thirty (30) days of selection of a mediator, and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 3.5. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 3.6. The dispute resolution process is a material condition of this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.
4. **Labor Code Compliance.** Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

5. **Rates.** These prevailing wage rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.
6. **Registration with DIR.** Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5
7. **Monitoring.** This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.
8. **Ownership of Work.** All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's Services, upon termination of this Agreement, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.
9. **Independent Contractor Status.** Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.
10. **Conflicts of Interest.** Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.
11. **Rebates, Kickbacks, or Other Unlawful Consideration.** Contractor warrants this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
12. **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after

the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Porterville
Transportation Department
291 N. Main Street
Porterville, CA 93257

To Contractor

13. Miscellaneous

13.1. Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13.2. Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

13.4. Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's prior written consent. Any attempt to do so will void. City's consent to one assignment, transfer or delegation shall not be deemed to be consent to any subsequent assignment, transfer or delegation.

13.5. Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Tulare.

13.6. Compliance with Law. Contractor shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

13.6.1. Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

13.6.2. Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, color, national origin,

handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.)

- 13.7. Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.
- 13.8. Business License.** Before the City signs this Agreement, Contractor shall obtain a City of Porterville Business License. Contractor shall maintain an active City of Porterville Business License during the term of this Agreement.
- 13.9. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 13.10. Construction of Agreement.** Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.
- 13.11. Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 13.12. Controlling Provisions.** In the case of any conflict between the terms of this Agreement and Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.
- 13.13. Entire Agreement.** This Agreement and the Attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.
- 13.14. Counterparts.** City and Contractor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.
- 13.15. Expenses for Enforcement.** Contractor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

14. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

The Parties agree to the full performance of these terms set forth here.

City of Porterville
291 N. Main Street
Porterville, CA 93257

Contractor

By: Martha A. Flores

By: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Federal Employer Tax ID No. _____

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No.XXX XXXXXXXXXXXXX
- B. Contractor Proposal
- C. Compensation



**CITY OF PORTERVILLE
CONTRACT ADDENDUM**

PROJECT TITLE: Security Fencing
RFP NO: RFP # 24/25-SR1979
ADDENDUM NO: 1
ISSUED: November 8, 2024

TO ALL BIDDERS,

Notice is hereby given that certain sections contained in the above referenced Contract Documents are amended, clarified, and/or deleted and are identified as Addendum No. 1 and attached hereto.

THEREFORE: All Bidders are required to note this Addendum No. 1, and all other Addendums, in the Acknowledgement of Addenda Page to be considered a responsible, responsive bidder.

Sincerely,
Richard Tree
Director of Transportation

Attachment

Attachment

PROPOSALS will be received by the Transportation Department, submitted through the Public Purchase website, until 2:00 P.M. on Tuesday, September 24, 2024, for the Contract to provide low carbon fuel standard (LCFS) services. **Proposals must be submitted through the Public Purchase website.**

A **mandatory site visit is REQUIRED** in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us.

All other terms and conditions remain unchanged.

END OF ADDENDUM No. 1

/s/ Richard Tree
Transportation Director

Note: This Addendum must be acknowledged in the Acknowledgement of Addenda page to be considered a Responsive bid.



**CITY OF PORTERVILLE
CONTRACT ADDENDUM**

PROJECT TITLE: Security Fencing
RFP NO: RFP # 24/25-SR1979
ADDENDUM NO: 2
ISSUED: September 17, 2024

TO ALL BIDDERS,

Notice is hereby given that certain sections contained in the above referenced Contract Documents are amended, clarified, and/or deleted and are identified as Addendum No. 2 and attached hereto.

THEREFORE: All Bidders are required to note this Addendum No. 2, and all other Addendums, in the Acknowledgement of Addenda Page to be considered a responsible, responsive bidder.

Sincerely,
Richard Tree
Director of Transportation

Attachment

Attachment

Clarifications

1. The wire that comes manufactured with stapled privacy slats measures 3.5" x 5.5", would this be an acceptable alternative to the 2" mesh? Can we use 4" end posts?
 - a. 3.5" x 5.5" is an acceptable alternative to 2" mesh. 4" end posts are an acceptable alternative to 3.5" end posts.
2. New top post is preferred.
3. Bottom Wire: 7 gauge galvanized steel is acceptable.
4. Temporary security fencing is required during sections under construction.
5. Tree trimming is the responsibility of the City.
6. On the Southside, new fence can be placed 2' outside of the existing fence to reduce grading and grubbing. If grading is required, grading shall be the responsibility of the Contractor
7. Work hours shall be between 5:00 am and 5:00 pm. Extended evening work hours may be extended per City approval.
8. City desires to have the project completed by June 2025.
9. Buy America Certification is required.

All other terms and conditions remain unchanged.

END OF ADDENDUM No. 2

/s/ Richard Tree
Transportation Director

Note: This Addendum must be acknowledged in the Acknowledgement of Addenda page to be considered a Responsive bid.



**CITY OF PORTERVILLE
CONTRACT ADDENDUM**

PROJECT TITLE: Security Fencing
RFP NO: RFP # 24/25-SR1979
ADDENDUM NO: 3
ISSUED: September 18, 2024

TO ALL BIDDERS,

Notice is hereby given that certain sections contained in the above referenced Contract Documents are amended, clarified, and/or deleted and are identified as Addendum No. 3 and attached hereto.

THEREFORE: All Bidders are required to note this Addendum No. 3, and all other Addendums, in the Acknowledgement of Addenda Page to be considered a responsible, responsive bidder.

Sincerely,
Richard Tree
Director of Transportation

Attachment

Attachment

Clarifications

1. The new fence will no longer terminate at the wood fence at the Fire Station. The project will now include replacing the wood fence and terminate at the Fire Station. Original estimated distance does not change.



2. Project will include one (1) commercial-grade twenty-foot wide manual double swing gate. Location will be determined by the City.
3. Barbed Security Selvage is preferred.

Selvages



4. Awarded Proposer will be required to obtain a City of Porterville Business License.
5. Proposal Pricing Sheet must be organized and presented in a clear, itemized format, allowing for a detailed evaluation of the costs associated with the project. The pricing shall be categorized, subtotaled, and Total Cost as follows:
 - 1) Material Costs
 - 2) Labor Costs
 - 3) Equipment Costs
 - 4) Removal and Disposal Costs
 - 5) Miscellaneous Costs

6. Proposal Scoring Criteria:

Experience and Qualifications (30%)
Technical Approach (30%)
Project Schedule (20%)
Price (20%)

7. Job Walk Attendees List – See below

Anderson Fence, Golden West Fence, All Commercial Fence, Yukon Fence, Roebbelen,
All Steel Fence, San Joaquin Fence, J&D Fence, Mar's Fence.

All other terms and conditions remain unchanged.

END OF ADDENDUM No. 3

/s/ Richard Tree
Transportation Director

Note: This Addendum must be acknowledged in the Acknowledgement of Addenda page to be considered a Responsive bid.



FENCE CONTRACTOR

License # 1033886

2433 Fruitvale Ave Ste. 7, Bakersfield, CA 93308

Office: 661-558-4283 Fax: 661-558-4291

northernunitedfence@outlook.com

DIR# PW-LR-1000580252

SEPTEMBER 27, 2024

TO: CITY OF PORTERVILLE

ATTN: RICHARD TREE

PROJECT: RFP SECURITY FENCING

BREAK DOWN

Material \$ 95,282.04

Labor \$36,840.00

Equipment \$ 2,000.00

Removal/Disposal \$ 4,000.00

Misc. \$1,000.00

Total Price \$ 139,122.04

TEMPORARY FENCING IS INCLUDED.

BEST REGARDS,

RAMIRO SANTIVANES

NORTHERN UNITED FENCE

PROJECT ESTIMATOR

CELL: (661) 873-3422

EagleMax Privacy Slat Fence

- 95% Sight obstruction to obscure view of areas not wanted in public view - for commercial and residential use.

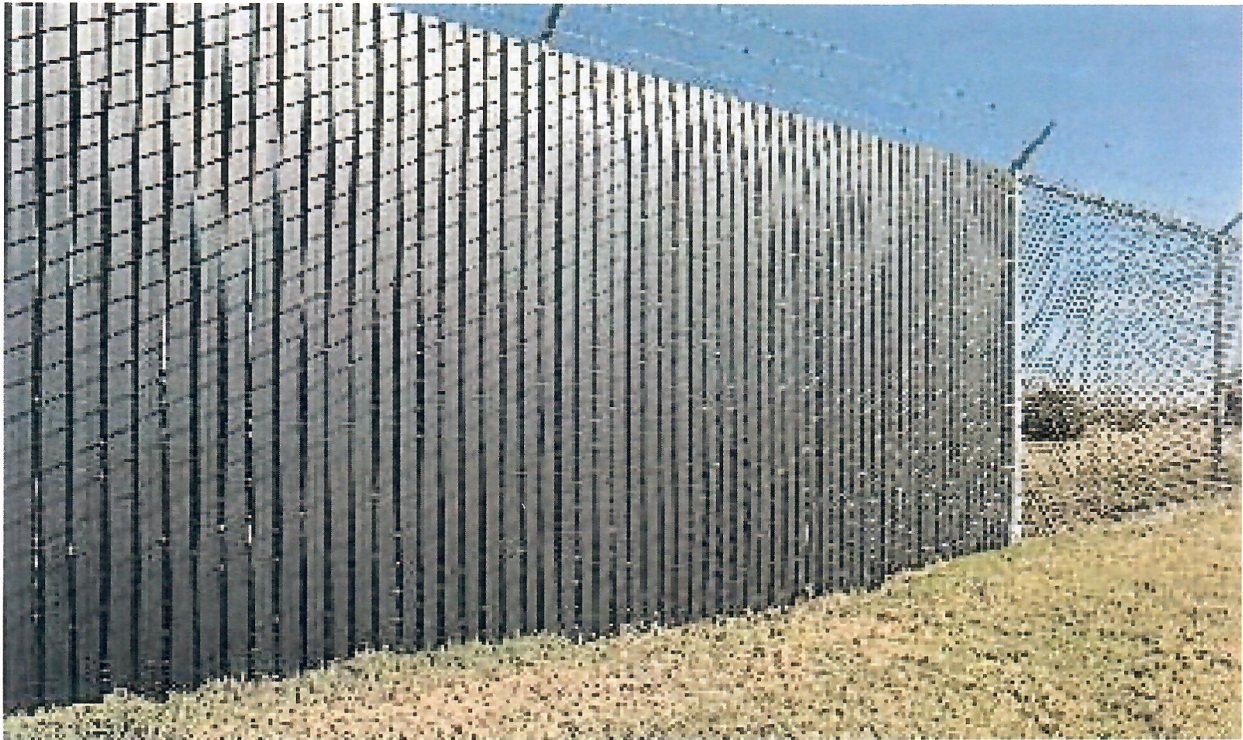
- Lower product maintenance required

- Reduced labor costs in the field

EagleMax fencing is available with galvanized or poly coated chain link in a variety of colors



- “Out of Sight - Out of Mind” additional protection



The industrial slat used in *EagleSlat* for commercial applications are flat tubular in shape, 2.4” wide. Inside the tube there are three legs for extra durability. The slats are extruded with High Density Polyethylene (HDPE) with UV (ultra violet) inhibitors, specifically designed to protect it from the harmful effects of the sun and lengthen the life of the product. The fin-slat used in the *EagleMax* for greater privacy has the same construction and makeup but will offer a higher level of sight privacy.



Galvanized Wire Privacy Vinyl Slat Fence

1. PRODUCT NAME

EagleSlat and EagleMax Slatted Fence are privacy fencing systems made up of Zinc Coated (Galvanized) Steel Chain Link Fence Fabric with pre-inserted polyethylene slats, framework, fittings, gates and incidental accessory items.

2. MANUFACTURER

Southwestern Wire, Inc.
4318 Dudley Blvd.
Building 475E
McClellan, CA 95652
1-800-348-9473 1-405-447-6900
FAX: 1-405-447-2830
Email: Sales@southwesternwire.com
URL: <http://www.southwesternwire.com>

3. PRODUCT DESCRIPTION

Basic Use:

Zinc coated (galvanized) steel chain link fence fabric with privacy slats inserted in pickets is suitable for privacy screening around commercial, industrial, institutional and recreational applications. Slat inserted fabric is specific by the amount of privacy needed for use in application, road, dock, airport, housing, forestry and military may require different levels of privacy.

Composition and Materials:

Southwestern Wire's Zinc Coated steel chain link fence fabric is produced by first cold-drawing good quality commercial grade steel rod into wire of the appropriate diameter and tensile. The open hearth, electric furnace or basic oxygen process produces the steel rod from which the wire is drawn.

Zinc coating is applied before weaving the wire into fabric. Consistent zinc coating weights of up to .80 oz./sq.ft. are obtained by using state of the art gas wipe galvanization systems the basic wire is cleaned, submerged in molten zinc and then passed through various cooling and wiping stations, resulting in a uniform coating around the entire surface of the wire. The zinc-coated wire is then woven into chain link fabric of the appropriate height and mesh. The fabric is free and flexible at all joints, free of excess zinc clumps and smooth to the touch. The slat material is inserted into the chain link at time of weaving and held in place.

The Zinc used for the coating conforms to the requirements of ASTM specification B6.

Standards:

ASTM F3000/F3000M-13 *Standard Specification for Polymer Privacy Insert Slats for Chain Link Fabric and Privacy Chain Link Fabric Manufactured Containing Pre-Installed Privacy Slats*
WLG2445 *Chain Link Fence Manufacturers Institute (CLFMI) WIND LOAD GUIDE for the selection of line posts & line posts spacing (Available @ <http://www.chainlinkinfo.org>)*

ASTM A392 *Standard Specification for Zinc-Coated Steel Chain-Link Fence Fabric*

ASTM A491 *Standard Specification for Aluminum-Coated Steel Chain-Link Fence Fabric*

ASTM F567 *Standard Practice for Installation of Chain-Link Fence*

ASTM A641 *Standard Specification for Zinc-Coated (Galvanized) Carbon Steel Wire*

ASTM A817 *Standard Specification for Metallic-Coated Steel Wire for Chain-Link Fence Fabric and Marcellled Tension Wire*
ASTM B6 *Standard Specification for Zinc (Slab Zinc)*

4. TECHNICAL DATA

General:

The manufacturer, if requested, will supply samples and certification that all materials furnished fully comply with the appropriate specifications.

Chain Link Fence Fabric:

The base metal of the chain link fence fabric is composed of commercial quality medium-carbon wire. The weight of zinc coating, wire sizes with allowable variances, and wire breaking strength, conform to ASTM A817 for the wire size specified. The fabric is zinc coated before weaving.

Coating Weight:

Zinc-coated (galvanized) steel chain link fence fabric which conforms to ASTM A392, and ASTM A641 as well as other specifications referenced above, is available in two coating classes with the following minimum coating weights. Class III - .08 oz./sq. ft. (180 g/m) and Class IV - 1.2 oz./sq. ft. (366 g/m). Aluminum coated steel chain link fence fabric will conform to ASTM A491.

Sizes:

Slat fabric is available in mesh sizes 2 inch and 3.5 x 5 inches and in heights from 36 inches to 144 inches (1,220 mm to 3,660 mm).

Unless otherwise specified, slat chain link fence fabric woven with a 2 inch (50 mm) or a 3.5 x 5 inch mesh and is knuckled at both selvages.

Slats:

The industrial slat used in Eagle Slat for commercial applications are flat tubular in shape, 2.4" wide. Inside the tube there are three legs for extra durability. The slats are extruded for High Density Polyethylene (HDPE) with UV (ultra violet) inhibitors, specifically designed to protect it from the harmful effects of the sun and lengthen the life of the product. The fin-slat used in Eagle Maximum for greater privacy has the same construction and makeup but will offer a higher level of sight privacy.

5. INSTALLATION

Install chain link fence fabric in accordance with ASTM Practice 567. The job site must be considered when finalizing specific details as post spacing and post footer sizes, framework sizes and gauges, wind load data, and freeze thaw rates. Refer to the Chain Link Manufacturers Institute (CLFMI) Wind Load Guide WLG2445 for line post size, spacing and embedment depth.

6. AVAILABILITY AND COST

Availability:

Zinc coated steel chain link fence fabric is available for shipment throughout the United States and worldwide.

Cost:

Material costs may vary depending on specific requirements. Costs may be obtained by calling Southwestern Wire, Inc. or one of their stocking dealers.

7. WARRANTY

Slat galvanized steel chain link fence fabric is warranted for 12 years against failure due to rust or corrosion.

8. MAINTENANCE

Periodic inspection is recommended but no routine maintenance is required.

9. TECHNICAL SERVICES

Technical services are available at Southwestern Wire.



**Practical Post Spacing Suggestions - Calculated from CLFMI WLG2445 WIND LOAD GUIDE*
as posted on CLFMI's web page 7-19-13. Maximum Post Spacing is 10 feet as per ASTM F567**

Post Type Fence Height Wind Speed	ASTM F1043 Group I-A (Sch 40 Pipe)				ASTM F1043 Group I-C (WT-40)			
	6 ft High		8 ft High		6 ft High		8 ft High	
	Post	Spacing	Post	Spacing	Post	Spacing	Post	Spacing
105 mph	Size, o.d.	Max.	Size, o.d.	Max.	Size, o.d.	Max.	Size, o.d.	Max.
Exposure B	4.000"	10 ft	4.000"	6 ft	2.875"	6 ft	4.000"	7 ft
Exposure C	4.000"	7 ft	6.625"	10 ft	4.000"	8 ft	-----	-----
Exposure D	6.625"	10 ft	6.625"	10 ft	-----	-----	-----	-----
110 mph	6 ft High		8 ft High		6 ft High		8 ft High	
Exposure B	4.000"	10 ft	4.000"	5 ft	2.875"	6 ft	4.000"	7 ft
Exposure C	4.000"	7 ft	6.625"	10 ft	4.000"	8 ft	-----	-----
Exposure D	4.000"	5 ft	6.625"	10 ft	4.000"	7 ft	-----	-----
120 mph	6 ft High		8 ft High		6 ft High		8 ft High	
Exposure B	4.000"	8 ft	6.625"	10 ft	2.875"	5 ft	4.000"	6 ft
Exposure C	4.000"	6 ft	6.625"	10 ft	4.000"	7 ft	-----	-----
Exposure D	6.625"	10 ft	6.625"	9 ft	4.000"	6 ft	-----	-----
130 mph	6 ft High		8 ft High		6 ft High		8 ft High	
Exposure B	4.000"	7 ft	6.625"	10 ft	4.000"	9 ft	4.000"	5 ft
Exposure C	6.625"	10 ft	6.625"	10 ft	4.000"	6 ft	-----	-----
Exposure D	6.625"	10 ft	6.625"	8 ft	4.000"	5 ft	-----	-----
140 mph	6 ft High		8 ft High		6 ft High		8 ft High	
Exposure B	4.000"	6 ft	6.625"	10	4.000"	7 ft	-----	-----
Exposure C	6.625"	10 ft	6.625"	8 ft	4.000"	5 ft	-----	-----
Exposure D	6.625"	10 ft	6.625"	7 ft	-----	-----	-----	-----
150 mph	6 ft High		8 ft High		6 ft High		8 ft High	
Exposure B	4.000"	5 ft	6.625"	10 ft	4.000"	6 ft	-----	-----
Exposure C	6.625"	10 ft	6.625"	10 ft	-----	-----	-----	-----
Exposure D	6.625"	10 ft	6.625"	10 ft	-----	-----	-----	-----

*For wind speeds greater than 150 MPH and for list current guide publication refer to the CLFMI WLG2445 posted on www.chainlinkinfo.com

Post spacing calculations were rounded to the nearest foot and spacings less than 5 ft were not listed. Wind speeds less than 105 MPH are not appropriate per the American Society of Civil Engineers ASCE/SEI 7-10 "MINIMUM DESIGN LOADS for BUILDINGS and STRUCTURES" which is the underlying document used in the CLFMI's wind load guide WLG2445.

- Exposure B: Urban and suburban areas, wooded areas or other terrain with numerous closely spaced obstruction having the size of a single-family dwellings or larger.
- Exposure C: Open terrain with scattered obstructions having heights generally less than 30 ft. This includes flat open country, grasslands, and all water surfaces in hurricane prone regions.
- Exposure D: Flat, unobstructed areas and water surfaces outside hurricane-prone regions. This category includes smooth mud flats, salt flats, and unbroken ice.

*Chain Link Fence Wind Load Guide for the selection of Line Post and Line Post Spacing (WLG 2445) CLFMI, Columbia, MD (2007)

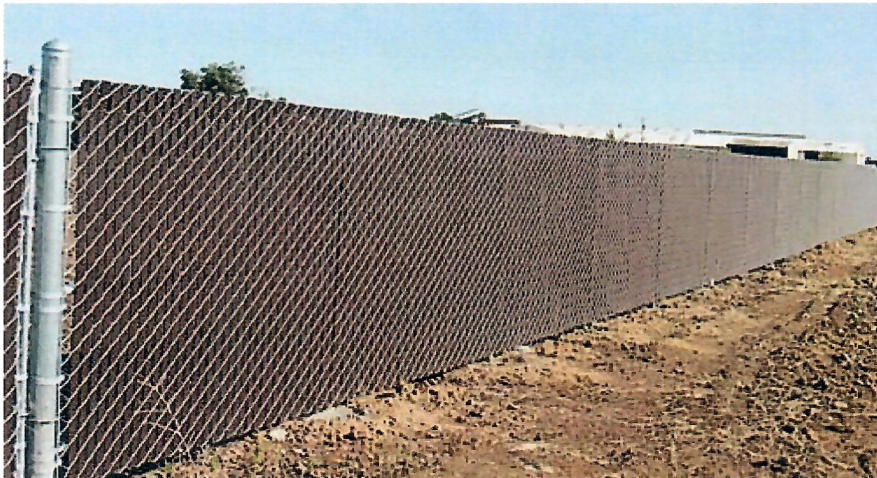


Exhibit A
FTA Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention.** Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute,

FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; (b) exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (d) federal

transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.”
6. Equal Employment Opportunity for Construction Activities. When undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any

federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.

- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within

ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.

- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.
- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381);

- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL

Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.

- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.
- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from

receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.

- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S.

FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned

vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products

used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42

U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.

2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. **Environmental Justice.** Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic

Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.

7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that

maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject

data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting

system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.
3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and

administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Authorization to enter into General Services Agreement with BigBelly Solar, LLC for Trash Receptacles Project

SOURCE: Public Works

COMMENT: The City of Porterville issued a Request for Proposals (RFP No. 24-25-SR1986) on August 27, 2024, inviting qualified vendors to submit proposals for providing trash receptacles to enhance waste management efforts within city limits. Proposals were received by the deadline of September 26, 2024, and evaluated based on compliance with the Scope of Work, technical approach, firm qualifications, and cost. The City received proposals from three (3) qualified vendors, and the following vendors were evaluated and scored:

Vendor	Score
Bigbelly Solar, LLC	98
Seccur	96
Tiger	93

Following the evaluation process, Bigbelly Solar, LLC emerged as the highest-ranked proposer, offering a comprehensive solution with advanced receptacle features tailored to meet the City's requirements for sustainability, durability, and maintenance. Bigbelly Solar, LLC presented a proposal that met the City's requirements under the RFP, including:

- Bigbelly's solution includes 50 double-station units equipped with foot pedals, lift bins, and bar-style tubular locks, providing secure, durable, and accessible waste disposal options. Additionally, each unit will feature anti-graffiti wraps and messaging panels.
- Bigbelly Solar, LLC proposed a cost-effective pricing structure with a 7.5% volume discount based on the quantity of components ordered, making this solution both economically and operationally feasible.
- The proposal aligns with the City's commitment to sustainability and compliance with Federal Transit Administration requirements for federally funded projects

The total project cost is not to exceed \$270,000, in alignment with the Federal Transportation Improvement Program (FTIP) and the City's FTA grant application CA-6260-2. The Trash Receptacles Project is funded at eighty percent (80%) by the FTA, totaling \$216,000 in federal funds, with the remaining twenty percent (20%), or \$54,000, covered by Local Transportation Funds (LTF). This budget structure is consistent with the project's federal and local funding allocations, ensuring full compliance with funding and project requirements.

RECOMMENDATION: That the City Council:

1. Approve the General Services Agreement between the City of Porterville and Bigbelly Solar, LLC for the Trash Receptacles Project at a total project cost not to exceed \$270,000; and
2. Authorize the Mayor, or designee, to execute the agreement and any related documents, subject to final review by the City Attorney.

ATTACHMENTS:

1. Porterville RFP # 24-25-SR1986_Plan Holders
2. Porterville RFP # 24-25-SR1986_Scoring Matrix
3. Bigbelly General Services Agreement
4. Exhibit A - RFP No. 24-25-SR1986 - Trash Receptacles
5. Exhibit B - RFP 24-25-SR1986 Addendum
6. Exhibit C - Bigbelly Solar, LLC Proposal
7. Exhibit D - FTA Terms and Conditions

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager

Plan Holders
Agency
Bid Number
Bid Title

City of Porterville
24/25-SR1986
RFP - Purchase Trash Receptables

Name	Contact	Address	Phone	Email	Proposal	
					Yes	No
Tulare Kings Counties Builders Exchange	Berenice Ruiz	823 W. Center AveVisalia, CA, 93291,	(559) 732-4568	bruiz@tkcbe.com		X
My Central Supply	Amy R Brown	19537 Blondo ParkwayElkhorn, NE, 68022,	(402) 577-0185	amy@mycentralsupply.com		X
Impact EcoVision Environmental Inc.	Doug Hill	12-1064 Salk Road, Suite 250Pickering, ON, L1W4B5,	(289) 987-4567	doug@ecovisionenvironmental.com		X
BigBelly Solar, LLC	Rafael Garcia	150 A Street, Suite 103, Needham, MA 02494	(888) 820-0300	rgarcia@bigbelly.com	X	
Compumetric Engineering Inc	Steve Thompson	PO Box 1438 Guasti, CA 91743	(909) 605-0538	sales@securr.com	X	
Tiger Supplies	Jacob Berger	64 Mountainview Blvd, Wayne, NJ 07470	(973) 854-8600		X	

RFP 24/25-SR 1986
Trash Receptacles
Scoring Matrix

	Points	Big Belly	Seccur	Tiger
Understanding of the Scope of Work	20	20	19	18
Demonstrates a clear understanding of the SOW required.				
Technical Approach and Methodology	20	20	18	17
Proposal outlines a comprehensive and feasible approach to providing the required products and services.				
Experience and Qualifications	20	20	20	19
Firm's experience with similar projects, particularly federally funded transit projects.				
Key Personnel and Project Team	10	10	10	9
Qualifications of key personnel who will be assigned to this project.				
Price Proposal	30	28	29	30
Competitive and reasonable cost in comparison to other proposals.				
Total Points	100	98	96	93

**CITY OF PORTERVILLE
GENERAL SERVICES AGREEMENT WITH
BIGBELLY SOLAR, LLC FOR TRASH RECEPTACLES**

This Trash Receptacles Agreement (this “Agreement”) is dated as of the ____ day of _____, 2024 (the “Effective Date”) by and between City of Porterville, a charter city and municipal corporation (“City”), and Bigbelly Solar, LLC, a Massachusetts Limited Liability Corporation (“Bigbelly”). The City and Bigbelly may be referred to herein as a “Party” individually and the “Parties” collectively.

RECITALS

WHEREAS, on August 27, 2024, the City issued a Request for Proposals No. 24/25-SR1986 for the Trash Receptacles Project (the “RFP”) as described in Exhibit A;

WHEREAS, on September 12, 2024, the City provided certain responses to questions submitted during the RFP process, as described in Exhibit B;

WHEREAS, on September 26, 2024, Bigbelly submitted its proposal outlining its services, qualifications and technical capabilities for the fuel system upgrades project as described in Exhibit C;

WHEREAS, the City owns bus stops located along its fixed routes (the “Facilities”) on property owned by the City (the “Property”);

WHEREAS, the City desires for Bigbelly to provide Products (hereinafter defined) at the Facilities on the City’s behalf, upon the terms set forth herein.

NOW THEREFORE, in consideration of the respective covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Term of Agreement. The initial term of this Agreement shall commence on the Effective Date and end when the City Council accepts the project as complete. The initial term and any renewal terms are referred to herein as the “Term.”

2. Trash Receptacles

(a) Bigbelly’s Responsibilities. The City hereby engages Bigbelly as the exclusive provider of trash receptacles at the Facilities as described in Exhibit A and Exhibit B, attached hereto, and to perform certain other services relating to the Facilities, as described in Exhibit C, attached hereto, (collectively, the “Services”), all on the terms and conditions and as more fully described in this Agreement. Bigbelly hereby accepts such engagement and agrees to provide the products and services in accordance with the terms and conditions of this Agreement.

(b) Fees. As consideration for providing the products and services under this Agreement, the City shall pay Bigbelly the amounts set forth in Exhibit C attached hereto, with total payments not to exceed \$270,000.

(c) **Products and Service Guidelines.** Bigbelly shall provide the products and services in material compliance with any and all Applicable Laws. For purposes of this Agreement, “Applicable Law” shall mean (a) all applicable federal, state, and local statutes, laws, requirements, decrees, ordinances, and codes, of all governmental authorities, including any federal, state, and local governments or any departments, bureaus, or agencies thereof having jurisdiction over the Property or the Facilities; and (b) all other applicable rules, regulations, interpretations, and orders of any commissions, boards, agencies, or other legislative, executive, judicial, or other governmental or quasi-governmental bodies or officers having jurisdiction to regulate or supervise the Property or the Facilities.

(d) **Permits and Approvals.** The City shall, at the City’s cost, be responsible for obtaining and maintaining any licenses, permits, or approvals required to operate and maintain the Property and the Facilities, except for any such licenses, permits or approvals that Bigbelly is legally required to obtain in its name in connection with its provision of the products and services.

3. **The City’s Obligations and Responsibilities.**

(a) **Payment of Bigbelly Billings.** The City shall pay each invoice submitted by Bigbelly within thirty (30) days following receipt of the invoice by the City. For purposes of this Section, receipt shall be defined as the day the invoice is transmitted by Bigbelly. Any payments not made when due shall accrue interest on the unpaid amount at a rate of 10% per annum, calculated from the date payment is due to and including the date payment is received by Bigbelly. **IF PERMITTED BY LAW, BIGBELLY SHALL PASS THROUGH TO THE CITY ANY SURCHARGES INCURRED BY BIGBELLY RELATED TO THE CITY’S PAYMENT OF ITS INVOICES THROUGH USE OF A CREDIT CARD.**

In the event that the City fails to make payments in a timely manner or fails to meet Bigbelly’s continuing credit approval, Bigbelly may suspend any and all services provided under this Agreement, until such time as the City brings payments current and meets Bigbelly’s continuing credit approval.

(c) **Compliance with Law.** In performing its obligations under this Agreement, the City shall comply in all material respects with all Applicable Laws.

4. **Termination.**

(a) **For Convenience.** The City may terminate this Agreement, in whole or in part, at any time for its convenience and without cause by providing Bigbelly with thirty (30) days’ written notice. In the event of such termination, the City shall be liable only for payment for services satisfactorily rendered and expenses incurred up to the effective date of termination. Bigbelly shall not be entitled to any other form of compensation, including for anticipated profits or unperformed services.

(b) **For Default or Breach.** Either Party may terminate this Agreement for default if the other Party: (a) becomes insolvent; (b) files any proceeding in bankruptcy, or acquires bankruptcy status; (c) has a receiver or receiver manager appointed with respect to it or any of its assets; or (d) seeks the benefit of any statute providing protection from creditors. Either Party may also terminate this Agreement for breach if the other Party materially breaches any provision of this Agreement provided: (i) the non-breaching Party provides the breaching Party with written notice of breach and a thirty (30) day period within which to cure such breach (“Cure Period”); and (ii) the breaching Party fails to cure each such breach within the Cure Period provided, however, that where it is not commercially reasonable to fully effect a cure to the other Party within the thirty (30) day period

set forth above, the Party in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such thirty (30) day period and thereafter proceeds diligently to cure the breach to the reasonable satisfaction of the non-breaching Party. Any termination of this Agreement shall be without prejudice to each right and/or remedy which the non-breaching Party may possess against the breaching Party under this Agreement, at law, in equity, and/or otherwise. In the event of termination, the City shall pay Bigbelly all amounts which accrued up to the date of the termination and reimburse Bigbelly for any and all reasonable costs related to the repair and maintenance of the Facilities, paid or irrevocably committed to by Bigbelly prior to the date of the termination. The preceding sentence shall survive termination of this Agreement.

5. **Ownership of Facilities and Improvements.** As between Bigbelly and the City, all right, title, and interest in and to the Facilities and any improvements made to the Facilities shall at all relevant times remain with the City. The City retains all rights in and to the Facilities and any improvements thereon.

6. **Warranty.**

With respect to services performed by Bigbelly pursuant to this Agreement, for a period of five (5) year from the date of performance of such services (the “Warranty Period”), Bigbelly warrants to the City that the services shall be free from defects in workmanship (the “Warranty”).

If the City gives Bigbelly prompt written notice of breach of this Warranty during the Warranty Period, Bigbelly shall, at its sole option and as the City’s sole remedy, either re-perform the service (the City to provide Bigbelly with unencumbered access to the Property and equipment) or refund the purchase price therefore. The City shall bear the costs of access for Bigbelly’s remedial Warranty efforts (including removal and replacement of systems, structures or other parts of the City’s facilities), de-installation, re-installation and transportation of the parts to Bigbelly and back to the City. If Bigbelly determines that any claimed breach is not, in fact, covered by this Warranty, the City shall pay Bigbelly its then customary charges for any re-performance completed by Bigbelly, or, in the event Bigbelly refunded the City the purchase price, the City shall return the purchase price to Bigbelly. Bigbelly’s warranty is conditioned on the City’s (a) operating and maintaining the applicable work in accordance with Bigbelly’s instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Bigbelly. Bigbelly’s warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Bigbelly). Warranty repair or replacement shall not extend or renew the applicable Warranty Period.

With respect to equipment, part(s) or material(s) provided by Bigbelly to the City pursuant to this Agreement, Bigbelly hereby assigns to the City, to the extent assignable, any warranties made to Bigbelly by the applicable manufacturer or supplier, and Bigbelly shall have no other liability to the City related to the supplied equipment, part or material under warranty, tort or any other legal theory.

THE WARRANTIES SET FORTH IN THIS SECTION ARE BIGBELLY’S SOLE AND EXCLUSIVE WARRANTIES. BIGBELLY MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT.

7. Indemnification.

(a) Bigbelly hereby agrees to indemnify, hold harmless and defend the City, and its officers, directors, employees and agents (collectively, the “City Indemnitees”), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys’ fees (collectively, “Damages”), which any or all of the City Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) Bigbelly’s material breach of any representations, covenants or warranties of Bigbelly set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of Bigbelly, its employees, officers, owners, directors or agents in the performance of this Agreement; or (c) the material violation of any law, ordinance or regulation by Bigbelly. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the City Indemnitees.

(b) The City hereby agrees to indemnify, hold harmless and defend Bigbelly, and its officers, directors, employees and agents (collectively, the “Bigbelly Indemnitees”), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys’ fees (collectively, “Damages”), which any or all of the Bigbelly Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) the City’s material breach of any representations, covenants or warranties of the City set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of the City, its employees, officers, owners, directors or agents in the performance of this Agreement; (c) the material violation of any law, ordinance or regulation by the City; or (d) any pre-existing or migratory environmental condition or hazard. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the Bigbelly Indemnitees.

8. Insurance Requirements.

The City and Bigbelly shall each procure at their respective expense, and maintain in full force and effect during the Term of this Agreement, including any renewals, with insurance carriers rated at least A- VII or Better in A.M. Best's Insurance Report and admitted to do business in the state where the Facilities is located, the following primary insurance in at least the minimum amounts specified, with the other respective Party named in the commercial general liability policy (or excess liability or umbrella liability policy, if applicable) and the automotive liability policy as an additional insured and including a transfer of rights or waiver of subrogation endorsement. Such insurance, excluding workers compensation, shall be endorsed to require at least thirty (30) days' written notice to the other respective Party of cancellation.

(a) Commercial General Liability Insurance, including coverage at least as broad as the latest version of the Insurance Service Office Commercial General Liability coverage (occurrence form CG001) to a combined single limit of not less than \$1,000,000. Excess liability or umbrella liability coverage may be used to evidence or provide limits in addition to primary limits of no less than \$1,000,000 on the commercial general liability policy.

(b) Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of \$1,000,000.

(c) Workers Compensation and Employers Liability

(i) Workers' compensation in compliance with applicable state and federal laws.

(ii) Employers' liability with a limit of not less than \$1,000,000.

The requirements for carrying the foregoing insurance shall not derogate from the provisions of indemnification as set forth in this Agreement. If a Party maintains higher limits than the minimums shown above, the other Party requires and shall be entitled to coverage for the higher limits maintained.

The City shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

Bigbelly Solar, LLC
150A Street, Ste 103
Needham, MA 02494
Attn: Brian Phillips
Phone: (617) 431-4435
Email: bphillips@bigbelly.com

Bigbelly shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

City of Porterville
555 N. Prospect St
Porterville, CA 93257
Attn: Richard Tree
Email: rtree@ci.porterville.ca.us

9. Assignment. Neither Party shall have the right to assign its rights or obligations hereunder, in whole or in part, without obtaining the prior written consent of the other Party and any attempted assignment without such prior written consent shall be void. Permitted assigns shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

10. Liens. The City represents that it is the owner of the Property and has full authority to enter into this Agreement. So long as the City is not in breach of any term of this Agreement and has timely paid all of Bigbelly's invoices, then Bigbelly shall make timely payment to all contractors performing work on behalf of Bigbelly and shall, at its expense, cause any lien filed by any contractor performing work on behalf of Bigbelly to be canceled or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise within thirty (30) days after Bigbelly receives actual notice of the filing of such lien, charge, or order for the payment of money.

11. **Relationship of Parties.** Bigbelly and the agents and employees of Bigbelly in the performance of this Agreement shall act in an independent capacity as independent contractors and not as officers or partners or employees or agents of the City.

12. **Governing Law.** This Agreement shall be subject to and construed in accordance with the laws of the State of California.

13. **Attorneys' Fees.** In the event of any litigation between the Parties concerning any provision of this Agreement or the rights and obligations of any party in relation thereto, the prevailing Party shall be entitled to an award for all costs incurred by reason of such litigation, including but not limited to reasonable attorneys' fees and fees and expenses of witnesses. The trier of fact shall designate the prevailing Party.

14. **Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by certified mail, return receipt requested, or overnight courier or facsimile to the other Party at such address as set forth below:

If delivered to City:

City of Porterville
Attn: Richard Tree
555 N. Prospect St
Porterville, CA 93257
Email: rtree@ci.porterville.ca.us

If delivered to Bigbelly:

Bigbelly Solar, LLC
150A Street, Ste 103
Needham, MA 02494
Attn: Brian Phillips
Phone: (617) 431-4435
Email: bphillips@bigbelly.com

Each Party shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other Party. Without limiting any other means by which a Party may be able to prove that a notice has been received by the other Party, a notice shall be deemed to be duly received:

- (a) if sent by hand, the date when left at the address of the recipient;
- (b) if sent by certified mail, the date of the return receipt;
- (c) if sent by overnight courier, the date when receipt is acknowledged at the address of the recipient; or
- (d) if sent by facsimile, the date of the confirmation.

15. **Force Majeure.** If either Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil

disturbances, acts of terrorism, interruptions in utility services, the cessation of providing necessary products or services to Bigbelly by any supplier to Bigbelly, labor disputes, catastrophic equipment failures due to extraordinary events beyond the control of Bigbelly, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government (“Force Majeure”), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term “Force Majeure” does not include and a Party shall not be excused from any payment obligations hereunder.

16. Limitation of Liability. Neither Party shall have any liability to the other Party for special, consequential, or incidental damages, except however in connection with a claim made against either Party by a third party, provided that such claim arises out of or results from the negligence or willful misconduct or any other claim within the scope of the indemnity obligations of Bigbelly or the City, as applicable, under this Agreement.

17. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties, and is not intended to create any benefits to any third parties.

18. Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

19. Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

20. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties’ essential objectives as expressed herein.

21. Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

22. Representation regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

23. Incorporation of FTA Terms. The preceding provisions, as described in Exhibit D, include in part certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT) Federal Transit Administration (FTA), whether or not expressly set forth in this Agreement. All contractual provisions required by FTA are hereby incorporated by reference, and any conflicts between FTA requirements and other contract provisions shall be resolved in favor of FTA requirements. Bigbelly shall not perform any act or fail to perform any act that would cause the City to be in violation of FTA requirements.

24. Order of Precedence. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (i) Exhibit D (FTA Terms and Conditions); (ii) the body of this

Agreement, (iii) Exhibit A (RFP 24/25-SR1986), (iv) Exhibit B (Addendums) and (v) Exhibit C (Bigbelly Proposal).

25. Miscellaneous. This Agreement, along with the exhibits and appendix attached hereto, constitutes the complete and exclusive agreement and understanding between the Parties and supersedes all prior communications and agreements, whether oral or written. The Parties expressly agree that there are no other agreements, understandings, restrictions, warranties, and/or representations by, between and among the Parties relating to the subject matter of this Agreement other than those expressly set forth herein or herein provided for. This Agreement may only be modified by an instrument that is executed by each Party's duly authorized representative. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which collectively constitute one (1) and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the Effective Date.

CITY OF PORTERVILLE

BIGBELLY SOLAR, LLC

By: Martha A. Flores

By: Brian Phillips

Title: Mayor

Title: President

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No. 24/25-SR1986
- B. Addendums
- C. Bigbelly Proposal
- D. FTA Terms and Conditions

EXHIBIT A

RFP 24/25-SR1986

EXHIBIT B

RFP 24/25-SR1986 ADDENDUMS

EXHIBIT C

BIGBELLY SOLAR, LLC PROPOSAL

EXHIBIT D

FTA TERMS & CONDITIONS



**CITY OF PORTERVILLE
REQUEST FOR PROPOSAL RFP No. 24/25-SR1986
TRASH RECEPTACLES**



August 27, 2024

The City of Porterville does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities. It is the City's policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities.

The project is funded in part by the Federal Transit Administration Catalog of Federal Domestic Assistance (CFDA) 20.500 and 20.507. The City of Porterville reserves the right to reject any or all proposals.



**CITY OF PORTERVILLE, CALIFORNIA
REQUEST FOR PROPOSALS (RFP) NO. XXXXX
TRASH RECEPTACLES**

PROPOSALS will be received by the Transportation Department, submitted through the Public Purchase website, until 2:00 P.M. on Thursday, September 26, 2024, for the Contract to provide trash receptacles. **Proposals must be submitted through the Public Purchase website.**

A mandatory site visit is NOT REQUIRED in order to be familiar with the site and the work to be performed.

This contract is federally funded and as such, the Federal Requirements associated with the performance of services under this contract have been included with this RFP. The awarded Proposer will be responsible for adherence to all local, state, and federal requirements listed herein. These requirements are hereby incorporated into the subsequent contract arising from this RFP.

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. All addenda and correspondence during the process will be handled electronically through the Public Purchase website.

The City has not established a DBE goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract. The City of Porterville overall DBE goal is 1% of total contracts (including subcontracts) awarded.

The City hereby affirmatively ensures that Minority Business Enterprises and Disadvantaged Business Enterprises (DBE) will be afforded the full opportunity to submit proposals in response to this notice. Individuals and/or entities submitting bids/proposals to the City of Porterville will not be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, gender, gender identity or expression, age, sexual orientation, or military or veteran status in any consideration leading to the award of contract.

The right is reserved by the City of Porterville to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Publication Dates:

August 27, 2024

Table of Contents

Section I - Instructions	4
Section II – Standard Terms and Conditions	14
Section III – Special Terms and Conditions	25
Section IV – Insurance and Indemnification	34
Section V - SCOPE OF WORK	38
Section VI – Federal Transit Administration (FTA) Terms and Conditions	40
Exhibit A – Required Forms	65
Exhibit B – Sample General Services Agreement	72

Section I - Instructions

RFP/Agreement Schedule

Event	Date of Event
RFP Available to the public	August 27, 2024
Required Site Tour	N/A
Deadline to submit questions	September 12, 2024
Proposal submittal deadline @ 2:00 pm PST	September 26, 2024
Short list established and vendors notified	October 3, 2024
Interviews/Presentation with short-listed vendors (if required)	N/A
Award of Contract @ City Council Meeting	October 15, 2024
Contract Begins	November 1, 2024

City's Vendor Self-Registration and Notification

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. No proposal shall be received from an individual or firm that has not accessed the proposal documents from the Public Purchase website. All addenda and correspondence during the process will be handled electronically through the Public Purchase website. Questions regarding this request for proposals must be submitted through the Public Purchase website. **Proposals must be submitted through the Public Purchase website.**

Background

The City of Porterville ("CITY") is located in Tulare County, which is part of the Central San Joaquin Valley of California. The San Joaquin Valley is a rich agricultural area and Tulare County is recognized as the largest agricultural-producing county in the world.

Porterville has a land area of approximately 14.3 square miles (9,161 acres), situated at the base of the foothills of the Sierra Nevada Mountain Range. It is approximately 30 miles southeast of Visalia (the County seat); 60 miles northeast of Bakersfield, 165 miles northeast of Los Angeles, and 254 miles southeast of San Francisco. State Routes 65 and 190 bisect the community.

The Porterville City Council is the policy-making body for the City of Porterville's Transportation Department. It adopts the Short-Range Transit Plan, and through the annual budgetary process, establishes operational and funding levels for the system. The City Council also sets operational policies and parameters.

Management of the City's public transportation system, referred to as Porterville Transit, is an integrated function of the City of Porterville. The Transportation department is responsible for the overall management of the service. The City is also responsible for the maintenance of the transit fleet, through its Field Services Division.

The City outsources, to a private contractor, to perform daily operations of Porterville Transit. The Director of Transportation is responsible for the overall administration, planning, monitoring, and marketing of the system. The Director of Transportation also acts as a liaison to the Tulare County Association of Governments (TCAG), the California Department of Transportation (Caltrans) and the Federal Transit Administration (FTA). The contracted local General Manager is responsible for the day-to-day operations management; the hiring, testing, training and supervision of all drivers and dispatch staff; fare collection; reporting; ridership data collection; and the operation of Porterville Transit vehicles in accordance with City policy and all State and Federal regulations. The County of Tulare contracts with the City of Porterville to provide transit service to unincorporated areas surrounding Porterville. The County reimburses the City for service provided to County residents using Local Transportation Funds (LTF).

Porterville Transit provides an array of transportation services in the form of fixed route bus services, ADA complementary paratransit, and innovative On-Demand services.

Preparation of Offer

1. Any person (“Proposer”) submitting a Proposal (“Proposal”) in response to this Request for Proposals (“RFP”) shall examine the Scope of Work carefully and be informed thoroughly regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract to be awarded under this RFP (the “Contract”). No allowances shall be made because of lack of knowledge of any specifications, conditions, or requirements of this RFP.
2. All forms provided must be completed and submitted with your Proposal.
3. It is permissible to copy submittal forms if necessary. Erasures, interlineations, or other modifications of the Proposal must be initialed in original ink by the authorized person signing the offer. No Proposal will be altered, amended, or withdrawn after the specified offer due date and time. The City is not responsible for Proposer’s errors or omissions.
4. All time periods stated as a number of days will be calendar days.
5. It is the responsibility of all Proposers to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after due date and time. Proposers are strongly encouraged to:
 - 1) Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 2) Study and carefully correlate Proposer’s knowledge and observations with the RFP document and other related data.

- 3) Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which a proposer has discovered in or between the RFP document and such other related documents.
- 4) The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Proposer is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- 5) Proposers are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Proposals offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 6) Proposers' responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products proposed. Proposals submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 7) Prices shall be submitted on a per unit basis by line item, when applicable. Failure to submit any unit pricing will be sufficient grounds for the City to consider the proposal to be non-responsive. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

Exceptions

Proposer must not take any exceptions to any terms, conditions or material requirements of this solicitation. Proposals submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Proposals must conform to all the requirements specified in the solicitation. The City encourages Proposers to send inquiries to the procurement officer rather than including exceptions in their Proposal.

Communications to City

All questions pertaining to this RFP, or any matters relating thereto the Scope of Work, or any questions pertaining to the RFP or RFP documents, shall be in writing and shall be submitted only through the Public Purchase website. Communications sent to any other person at the City or at any other address may, in the City's sole discretion, be deemed to be "non-responsive" and the

City in its discretion may elect to disregard any such questions. The City shall not respond to oral inquiries, and oral statements of any nature by the City or any of its representatives may not be relied upon for any purpose whatsoever.

Addenda

The City of Porterville will not be responsible for any oral instructions made by any employees or officers of the City of Porterville regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.

Business in California

The City will not enter contracts with Proposers (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of California, unless the proposer asserts a statutory exception prior to entering a contract with the City.

Licenses

If required by law for the operation of the business or work related to this Proposal, Proposer must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

Certification

By signing the Proposal, proposer certifies:

- The Proposer's submission of the Proposal did not involve collusion or other anti-competitive practices
- The Proposer shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Proposer has not given, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

Minimum Qualifications

- Proposer must have been in operation a minimum of five years.

Certificates of Insurance

Upon notification of a recommended award, the Proposer will have 14 calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive and responsible Proposer whose proposal, in the sole and absolute discretion of City, for providing the goods and/or services contained in this solicitation, who have demonstrated the ability to perform in an acceptable manner, and is most advantageous to the City.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.

A response to a solicitation is a Proposal to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Proposals do not become contracts until they are executed by the Mayor. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual proposers or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under California Statutes, until the resulting contract(s) are awarded to all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Proposers may not discuss the solicitation with any City employees or evaluation panel members.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Porterville City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Proposals, the City Manager will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. PROPOSERS THAT

VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Proposer, regardless of whether the City responds to the contact. Proposers that violate this policy will be disqualified until the resulting contract(s) are awarded, or all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

Protest Process

In the event any person wishes to file a Protest regarding this RFP, such Protest shall be made in accordance with City’s FTA Procurement and Contract Administration Manual (which is available at www.ci.porterville.ca.us), the terms of which are hereby included herein by this reference. The City reserves the right to modify the terms of the protest procedure if it determines that such modification is in its best interest. Should there be any dispute between the City’s FTA Procurement and Contract Administration Manual and the provisions of this Section, the City in its discretion shall determine which provision governs.

By way of background, all Proposers understand and agree that the procurement process undertaken by virtue of this RFP is solely for the benefit of the City, and it is for the City to determine in its discretion which Proposal the City desires to accept. The City has provided for a Protest procedure not to grant any rights to any particular Proposer but, rather, to provide the City the opportunity to review and examine any information regarding any Proposal which it may not have fully evaluated. Thus, no Proposer has any legal right in connection with any Protest Proceeding and the City may, in its discretion, determine whether or not to reject any Protest.

In the event a Protest is rejected, the Proposer may appeal the rejection as set forth in the City’s FTA Procurement and Administration Manual or herein but, again, said appeal shall be decided by the City based upon what it determines to be in its best interest. As such, legal concepts (such as the California or Federal Rules of Civil Procedure and the Judicial Rules of Evidence) and other matters which may be applicable to judicial or other proceedings are not applicable to a Protest in accordance with the City’s FTA Procurement and Contract Administration Manual. In addition, the appeal process set forth in the City’s FTA Procurement and Contract Administration Manual is exclusive and upon the exhaustion of the appeal, no further appeal may be taken, or separate suit filed against the City.

By virtue of submitting its Proposal, any Protesting Party expressly agrees that its remedies are exclusively limited to the City’s Protest procedure set forth in the City’s FTA Procurement and Contract Administration Manual (as the same may be modified hereby) and that there shall be no appeal or litigation resulting from the final award of any Contract by the City. The foregoing is a material consideration in the consideration by the City of any Proposal.

Public Record

All Proposals submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to California State law. If a Proposer believes that a specific section of its Proposal response is confidential, the Proposer will isolate the pages marked confidential in a specific and clearly labeled section of its Proposal response. A Proposer may request specific information contained within its Proposal is treated by the Procurement Officer as confidential provided the Proposer clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Proposers as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Proposer in writing of any request to view any portion of its Proposal marked “confidential.” The Proposer will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Proposer does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

Right to Disqualify

The City reserves the right to disqualify any Proposer who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the Proposer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Proposer waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City of Porterville or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Proposer.

Late Proposals

Late Proposals must be rejected, except for good cause. If a late Proposal is submitted, the Department will document the date and time of the submittal of the late Proposal, keep the Proposal and notify the Proposer that its Proposal was disqualified for being late.

Pre-Bid Meeting

A mandatory site visit is NOT REQUIRED in order to be familiar with the site and the work to be performed.

Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award contracts.

Determining Responsiveness and Responsibility

Proposals will be reviewed for documentation of any required minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Proposals will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Proposals will render a Proposal nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a Proposal that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Proposer remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so in writing, the City may determine the Proposal to be nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by Contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Proposer be a responsible contractor. Responsibility includes the Proposer's integrity, compliance with public policy, skill, capacity, experience, record of past performance, financial and technical resources, and facilities for conducting the work to be performed.

The Procurement Officer will review each Proposal to determine if the Proposer is responsible. The City's determination as to whether an Proposer is responsible will be based on all information furnished by the Proposer, interviews (if any), any information at the City's request and information received from Proposer's references, including information about Proposer's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Proposer agrees to permit by submitting its Proposal, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Proposer's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Proposal.

Clarifications

The City may request written clarifications for such purposes as information gathering or eliminating minor irregularities in offers. Clarifications shall not otherwise afford the Offerors the opportunity to alter or change their offers.

Detailed Evaluation of Proposals and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Proposer's rankings and which Proposals are within the Competitive Range, when appropriate.

Proposals Not Within The Competitive Range

The City may notify Proposers of Proposals that the City determined are not in the Competitive Range.

Discussions With Proposers In The Competitive Range

The City will notify each Proposer whose Proposal is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Proposer. Each Proposer so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Proposal. The Proposers in the competitive range may be required to provide a demonstration of their product.

Demonstrations - Proposers in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Porterville. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If a Proposal in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Proposer to remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so, the City may determine the Proposal is nonresponsive, and the City may revoke its determination that the Proposer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Proposer about other Proposals received in response to this solicitation. During discussions with Proposers in the Competitive Range, the City will not give Proposers specific prices or specific financial requirements that Proposers must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace

or otherwise unacceptable. Proposers will not be told of their relative rankings before Contract award.

Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Proposer in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Proposal and make one BAFO.

If a Proposer's BAFO modifies its initial offer, the BAFO should include a "Change Log" identifying all modifications made to the Proposal. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Proposals. The City will adjust appropriately, at its sole discretion, the initial scores for criteria that have been affected by Proposal modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Proposal that is the most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to a Proposer whose Proposal is the highest rated and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

Section II – Standard Terms and Conditions

Contract Interpretation

Applicable Law

This Contract will be governed by the law of the State of California, and suits pertaining to this Contract will be brought only in Federal or State courts in Tulare County, State of California.

Contract Order Of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- Federal Terms and Conditions
- Special Terms and Conditions
- Standard Terms and Conditions
- Amendments
- Scope of Work
- Specifications
- Attachments
- Exhibits
- Instructions to Contractors
- Other documents referenced or included in the RFP

Organization – Employment Disclaimer

The Agreement resulting hereunder is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and will save and hold the City harmless with respect thereto.

Severability

The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

Non-Waiver of Liability

The City of Porterville as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable California law.

Parol Evidence

This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contract Administration and Operation**Records**

All books, accounts, reports, files, and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Porterville office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

Discrimination Prohibited

Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The Contractor will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts.

Equal Employment Opportunity and Pay

For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts.

For a Contractor with more than 35 employees: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

Documentation: Contractors may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

Monitoring: The City shall monitor the employment policies and practices of Contractors subject to this article as deemed necessary. The City is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

Health, Environmental and Safety Requirements

The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
- A list of all federal, state, or local (EPA, OSHA, Tulare County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this Agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

Compliance With Laws

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent Contractor, the City assumes no responsibility for the Contractor's acts.

Continuation During Disputes

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by a California Court of competent jurisdiction.

Emergency Purchases

The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

Costs and Payments

General

Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Proposal.

Payment Deduction Offset Provision

Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

Late Submission of Claim By Contractor

The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

Discounts

Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

No Advance Payment

Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

Fund Appropriation Contingency

The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

Maximum Prices

The City will not be invoiced at prices higher than those stated in any contract resulting from this Proposal. Contractor certifies, by signing this Proposal that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Proposal and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

F.O.B Point

All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

Contract Changes

Contract Amendments

Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

Assignment – Delegation

No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

Non-Exclusive Contract

Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

Risk of Loss and Liability

Title and Risk of Loss

The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

Acceptance

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

Force Majeure

Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

Loss of Materials

The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

Contract Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

Damage to City Property

Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

Non-Exclusive Remedies

The rights and remedies of the City under this Contract are non-exclusive.

Default In One Installment To Constitute Breach

Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

On Time Delivery

Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.

Default

In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

Covenant Against Contingent Fees

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

Cost Justification

In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Proposal price is fair and reasonable.

Work Product, Equipment and Materials

All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

Contract Termination

Gratuities

The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

Conditions and Causes for Termination

This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Contractor will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

State and Local Sales and Use Taxes

In accordance with applicable state and local law, sales and use taxes may be applicable to this transaction. The state and local sales and use tax burden and legal liability to remit taxes are on the vendor that is conducting business in California and the City of Porterville. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or

application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. Once your proposal is submitted, the Proposal is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

Tax Indemnification

Contractor shall, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including sales and use taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

Tax Responsibility Qualifications

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of California for any License or Sales taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in California statutes relative to State Sales and Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the California State Department of Revenue to release tax information relative to California Sales and Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

Russia Sanctions

Executive Order N-6-22 – Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, which shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

Mitigation of Heat-Related Illnesses and Injuries in the Workplace

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to

prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

- Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.
- Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- Access to shaded areas and/or air conditioning.
- Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
- Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
- Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures, and how to report heat illness and injury to emergency medical personnel.

The Contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Contractor to ensure compliance by its subcontractors.

Section III – Special Terms and Conditions

Term of Contract and Option To Extend

The Contract shall commence on the date both the City and Contractor execute the Agreement (“Contract’s start date”), and end when the City Council accepts the project as completed (“Contract’s end date”).

Post Award Conference

A post award conference may be held by the City prior to commencement of any work. Contractor will be required to attend. The purpose of this conference would be to discuss critical elements of the work schedule, operational problems, the transition plan and procedures.

Estimated Quantities

Quantities listed are the City’s best estimate and do not obligate the City to order or accept more than City’s actual requirements during the period of this Contract, as determined by actual needs. It is expressly understood and agreed that the Contract is to supply the City with its complete actual requirement for the Contract period.

Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the City Council prior to the institution of the change

Alteration In Character Of Work

No changes in the scope, character, or complexity of work may be made by Contractor without first receiving approval by contract amendment properly defining and limiting the change. The City will not pay any claim for extra work done or materials furnished by Contractor except as provided in this Contract, and Contractor may not do any work or furnish any materials not covered by this Contract unless first approved by the City through contract amendment. Any such work or materials furnished by Contractor without prior contract amendment is Contractor’s sole risk, cost, and expense, and Contractor may not make any claim for compensation for any such work or materials.

Method Of Invoicing And Payment

The CITY will compensate Contractor for satisfactory and complete performance of work under the Contract at the prices set forth in the Contract, with no additional charges for equipment, supplies, overhead, travel or administrative support.

Contractor shall be paid monthly in arrears. On or before the 10th day of each calendar month, Contractor shall submit one (1) invoice to the City for services provided during the previous month and each invoice shall contain the date, contract number, supporting documentation, and invoice amount. Advance payments are not authorized. Payment may only be made for actual goods and/or services that have been received, less liquidated damages.

The invoice must contain the associated purchase order number on the invoice itself and must be free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the City will return the invoice to Contractor. Contractor shall promptly resubmit the revised invoice to the City. Failure to identify an error does not waive any of the City's rights. The City shall make every effort to process payment for the purchase of services within 45 calendar days after receipt and approval of a correct invoice.

Any prompt payment discounts offered must be clearly noted by Contractor on all invoices submitted to the City. Monthly invoice must be sent for review to the City's Project Manager. The City shall notify the Contractor if the invoice has been approved or if it requires additional documentation and/or correction.

Following invoice approval, Contractor will email the invoice in PDF format to ap@ci.porterville.ca.us, copying the City's Project Manager. Each PDF attachment will contain only one invoice, although multiple PDFs may accompany an email. The email will be in plain text format free of any signatures or images (jpeg, bmp, etc.).

A "remit to" address must also be on the invoice and must match the address on file with the City. Any changes to the remit to address must be updated by the vendor.

Key Personnel

Contractor shall maintain the Key Personnel identified in its proposal for a minimum of 24 months from the "Effective Date" of contract award by City Council unless they are no longer employed by Contractor. Contractor shall notify the City in writing prior to removing, reassigning, or appointing an individual from or to any Key Personnel position whether in an acting or permanent capacity. For all Key Personnel, Contractor shall fill vacancies with City approval within 45 calendar days of the vacancy, unless otherwise approved by the City in writing. All of Contractor's Key Personnel shall be assigned full-time (a minimum of 40 hours per week) to this project, unless otherwise approved in writing by the City. In the event one or more of Contractor's Key Personnel is permanently replaced, Contractor shall notify the City in writing at least 72 hours prior to the replacement date and time. The replacement personnel shall be subject to the City's prior approval in writing.

Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

Performance Interference

Contractor shall notify the City's Project Manager immediately of any occurrence and/or condition that threatens to interfere with the full performance of the contract and confirm it in writing within 24 hours.

Unsatisfactory Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the Scope of Work, or elsewhere in this Contract. The City shall decide all questions as to the quality and acceptability of any work performed under the Contract as monitored and documented by the City. If, in the opinion of the City, performance becomes unsatisfactory, the City shall notify Contractor. Contractor shall have a reasonable time to cure the unsatisfactory performance.

If the unsatisfactory performance is not cured within the time specified, the City may immediately correct or complete the work to its satisfaction and deduct the associated costs from any balances due or to become due to Contractor. Contractor will be liable for difference between cost to the City to complete the Work with other forces and the cost to the City for completion of the Work by Contractor per the contract. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

Employee Identification and Facility Access

Only authorized Contractor employees are allowed on the premises of City facilities. Contractor employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contractor or subcontractor employee.

Confidentiality

"Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the "Effective Date" of contract award by City Council, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential

Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Contract; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Contract; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Contract. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City's written request or expiration of this Contract, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Contract. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: fpc.gov/resources/glossary.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term “process,” “processing,” or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

When Contractor processes PII pursuant to the Contract, Contractor shall, at no additional cost to the City:

- (1) process PII only within the United States and only in accordance with the Contract and not for Contractor’s own purposes, including product research, product development, marketing, or commercial data mining, even if the City’s data has been aggregated, anonymized, or pseudonymized;
- (2) implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice. (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
- (3) not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
- (4) as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
- (5) take reasonable steps to ensure the competence and reliability of Contractor’s personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;

(6) maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Contract and applicable laws;

(7) allow the City or its authorized agents to conduct audit inspection during the term of the Contract, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section.

If Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Contract, Contractor shall notify the City without undue delay within 48 hours; and:

(1) provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

(2) take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

(3) cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

(4) not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available

to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- (1) require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information;
- (2) act on newly acquired information whether or not such information should have been previously discovered;
- (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- (4) object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Contract. Contractor will bear the costs of all inquiries requested by the City.

Contacts With Third Parties

Contractor or its subcontractors shall not contact third parties to provide any information in connection with the deliverables provided under this Contract without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Contract or any other prior or existing contract with the City, Contractor or its subcontractors shall promptly inform the City, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section shall survive the termination of this Contract.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

No Third Party Beneficiaries

The parties expressly agree that this Contract is not intended by any of its provisions to create any right of the public or any member thereof as a third-party beneficiary nor to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

Non-Disclosure

Contractor shall not disclose, without the City's prior written consent, any information in the performance of the Services under this Contract to any person, firm, corporation, association, or other entity other than persons in the City's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall Contractor make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation, or other entity, except the City.

Contractor agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by Contractor's relationship with the City. Contractor further represents to the City that, as an inducement to enter this Contract, Contractor will hold this information in trust and confidence for the City's sole benefit and use.

Further, there shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City.

Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Contract, then, and in that event, upon written demand, Contractor shall relinquish to the possession and control of the City its entire file related to this Contract and only those portions of said file deemed by the City to be not privileged shall be returned to Contractor pending the resolution of the existing or anticipated litigation.

Contractor agrees that the requirements of this Section shall be incorporated into any subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Contract or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Contract shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

Accrued Liabilities

Contractor shall be responsible for the payment of all liabilities to its employees accrued during the contract term, including but not limited to accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between Contractor and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by Contractor at the end of the contract term and no additional

compensation shall be provided by the City for such accrued liabilities. Contractor shall not have any obligation for the liabilities of the prior contractor to its employees.

Claims or Demands Against The City

Contractor acknowledges and accepts the provisions of the Charter of the City of Porterville pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in the Charter of the City of Porterville alters, amends or modifies the supplemental and complementary requirements of the State of California Notice of Claim statutes pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

Moreover, nothing in this Contract will constitute a dispute resolution process, an administrative claims process, or contractual term sufficient to affect the date on which the cause of action accrues.

Conflicts of Interest

Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Contract upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Porterville City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Contract without liability, including any such commission, percentage, brokerage or contingent fee.

The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Contract, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Contract, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in a California court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

Section IV – Insurance and Indemnification

Standard General Defense and Indemnification

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Porterville and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Porterville. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

Contractor’s Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this Section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors and Contractor may purchase such additional insurance as they determined necessary.

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

Commercial General Liability – Occurrence Form

General Aggregate - \$1,000,000

Products – Completed Operations Aggregate - \$1,000,000

Personal and Advertising Injury - \$1,000,000

Fire Damage - \$1,000,000

Each Occurrence - \$1,000,000

The policy must name the City of Porterville as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.

There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Porterville as an additional insured.

City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.

The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

UM/UIM Per Person Limit \$1,000,000

UM/UIM Per Accident Limit \$1,000,000

- The policy must be endorsed to include the City of Porterville as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Worker's Compensation and Employers' Liability

Workers' Compensation

Employers' Liability: Statutory

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Porterville.
- This requirement does not apply when a contractor or subcontractor is exempt, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

Property Insurance – Contractor’s Property and Equipment

Contractor must maintain all risk property insurance for Contractor’s personal property. The CITY will have no responsibility for any damage to Contractor’s personal property and Contractor’s property insurance must be endorsed to include a waiver of subrogation against the CITY.

Additional Insurance Requirements

Policies must include, or be endorsed to include, the following provisions:

- 1) On insurance policies where the City of Porterville is named as an additional insured, the City of Porterville must be an additional insured to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by Contract.
- 2) Contractor’s insurance coverage or self-insurance must be primary insurance and non-contributory with respect to all other available sources.
- 3) Coverage provided by Contractor must not be limited to the liability assumed under the indemnification provisions of the Contract.

Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Porterville.

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of California and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be mailed, emailed, or hand delivered to City of Porterville.

Section V - SCOPE OF WORK

The scope of work set forth in this Request for Proposals represents an outline of the goods and services which the CITY anticipates the successful Proposer to perform, and is presented for the primary purpose of allowing the CITY to compare proposals. The precise scope of work to be incorporated into the General Services Agreement shall be negotiated between the City and the successful Proposer. **The CITY requests that the Proposer suggest changes to the scope of work (as a part of the proposal) in order to achieve the CITY's Project Objectives.**

The City is seeking proposals to purchase high capacity branded non-compacting waste and recycling receptacles for the existing Transit Center and major locations throughout the City. These units will be installed in pairs and outside on existing concrete. The City estimates that it will purchase a minimum of fifty (50) trash receptacles and fifty (50) recycling receptacles, and have the option to purchase up to one hundred (100) of each receptacle.

General Specifications

1. Construction:
 - a. Galvanized sheet metal, steel interior and exterior construction.
 - b. Powder-coat finish on exterior and full custom branding.
 - c. Locks on all access doors (keyed alike).
 - d. BAR Style Wheeled Lift Bin
 - e. Mounting brackets to secure to concrete.
 - f. Foot pedal for hands-free operation of hopper.
2. Public Safety:
 - a. Hopper mechanism design must prevent or deter the possibility of user reaching the trash bin through any opening.
3. Branding:
 - a. Supports custom graphic wraps.
 - b. Supports message panels.
4. Provide the City with a source for any ongoing product (liners or extra bins) needs.
5. Minimum, parts and labor, warranty of five (5) years

Proposal Format

Proposals should be clear, concise, and provide detailed information concerning the Proposer's ability to successfully perform the obligations as described in the Scope of Work. All Proposals shall include the following documentation in the proposal package:

1. Cover Letter
 - a. Cover letter shall introduce the Proposer and establish interest in providing trash and recycling receptacles that meet the requirements of the City. An individual duly authorized to commit resources on behalf of the Proposer must sign the letter.
2. Experience Statement
 - a. Indicate how many years of experience Proposer has in the development and construction of trash receptacles.
3. Describe procedures in place to provide assurances that trash receptacles will meet the needs of the intended use for the City.
4. Provide a list of at least three (3) references, current or past customers; including company name, address, contact name, phone number, current email address that have purchased units similar to the City's request.
5. Provide trash receptacle details on construction (drawings and/or pictures) and any unique design/safety features that will help the City evaluators in making a decision.
6. Provide a contract price proposal
7. Provide an estimated delivery schedule
8. Complete and submit all required forms

Section VI – Federal Transit Administration (FTA) Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in

addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.
[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention**. Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period**. Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records**. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance**. Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: **(a)** discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; **(b)** exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and **(d)** discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: **(a)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; **(b)** U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and **(c)** Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: **(a)** the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; **(b)** U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and **(c)** all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: **(a)** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; **(b)** Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; **(c)** Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; **(d)** federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and **(e)** FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
6. Equal Employment Opportunity for Construction Activities. When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the

preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.
- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.
- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall

continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.

- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381);
- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-

loading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working

conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon

acceptance of the bid, execute such contractual documents as may be required within the time specified.

- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.
- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the

employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.

- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.
- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require

Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver’s License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary

to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.

- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St. Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184.
- C. Compliance with FTA's "Buy America Requirements," 49 CFR Part 661, and "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, "Domestic Preferences for Procurements."

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (b) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. Environmental Justice. Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental

Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order Nos. 11988 and 13690 relating to “Floodplain Management.”
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R. part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an

academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by

the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.

G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C.

§ 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

The Proposer acknowledges it has received and read the following Addenda:

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form B

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☐ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF CALIFORNIA

COUNTY OF _____

_____ declares and says:

1. That he/she is the (owner, partner, representative, or agent) of _____, hereinafter referred to as (CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form E

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form F

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form G

ACKNOWLEDGEMENT OF “BEST VALUE” SELECTION PROCESS

PROPOSER hereby acknowledges that the selection process under this RFP will evaluate Proposals on a “Best Value” basis, which the Federal Transit Administration’s (FTA) Best Practices Manual defines as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

As a result, PROPOSER further acknowledges that pricing will not be the sole basis upon which Proposals are evaluated.

An individual authorized to bind the PROPOSER to this Agreement must sign below acknowledging and understanding of the foregoing.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Exhibit B – Sample General Services Agreement

CITY OF PORTERVILLE GENERAL SERVICES AGREEMENT WITH *[insert full name of Contractor and Project Name and/or number]*

This General Services Agreement (Agreement) is entered into between the City of Porterville, a municipal corporation (**City**), and _____ [complete name of legal business entity], a _____ [business status, such as a California corporation] (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain Contractor to complete a XXXXXXXXXX Project (Project); and
- B. On XXXXXXXX, the City issued a Request for Proposals (RFP) for the XXXXXXXXXX (Project). On XXXXXXXX, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the goods and services.
- C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. _____-2024 approved by the Porterville City Council on _____, 2024.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall provide the goods and services required to complete the Project, described in Exhibit “A” attached hereto and incorporated herein by reference. The goods and services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: _____. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractor or subcontractor, without City’s prior written consent. The City may terminate this Agreement if Contractor makes any such change or replacement, or uses any unapproved subcontractor or subcontractor.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all

requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1. Term. The Term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6.

3. Compensation. City shall pay Contractor on a lump sum basis, at the billing rate set forth in Exhibit “C”, attached hereto and incorporated herein by this reference for goods and services performed under this Agreement.

3.1. Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$_____. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City’s prior written approval. Notwithstanding anything contained herein to the contrary, the payment of any funds under this Agreement shall be subject to the City of Porterville’s appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

3.2. Invoices. Contractor shall submit monthly invoice(s) to the City that describe the goods and services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor’s failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Contractor.

3.3. Payment. Subject to the City acceptance of the Services as discussed in Exhibit A attached hereto and completion of the Project to the City’s satisfaction, within 30 days after the City’s receipt of invoice(s), City shall make payment to the Contractor based upon the services described on the invoice(s).

3.4. The acceptance by Contractor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Contractor for anything completed, finished or relating to Contractor’s services. Contractor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Contractor or its employees, subcontractors, agents and subcontractors for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Contractor, its employees, subcontractors, agents and subcontractors.

3.5. Contractor agrees to maintain books, accounts, payroll records and other information relating to the performance of Contractor’s obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Contractor in the

performance of Contractor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

- 4. Indemnification.** Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In the event there is a finding and/or determination that Contractor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Contractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any all claims relating to or in connection with such a finding and/or determination.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

Contractor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

- 1. Insurance.** Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representative, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 1.1. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

- 1.2. Automobile Liability** (with coverage at least as broad as ISO CA 00 01 07 097, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 1.3. Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 1.4. Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.
- 1.5. Endorsements.** Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 1.5.1.** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 1.5.2.** For any claims related to this Agreement, Contractor’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor’s insurance and shall not contribute with it.
- 1.6. Notice of Cancellation.** Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.
- 1.7. Authorized Insurers.** All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 1.8. Insurance Certificate.** Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.
- 1.9. Substitute Certificates.** Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 1.10. Contractor’s Obligation.** Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

2. **Termination.** The City may terminate this Agreement in its sole and absolute discretion by giving ten (10) days' written notice to Contractor. Within five (5) days of such a termination, Contractor shall give the City all original documents relating to the Services in Contractor's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Contractor pursuant to this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
3. **Dispute Resolution.** If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:
 - 3.1. Each Party shall designate a senior management or executive level representative to negotiate the dispute.
 - 3.2. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority,
 - 3.3. If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 3.4. The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person to serve as the mediator, shall be commenced within thirty (30) days of selection of a mediator, and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 3.5. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 3.6. The dispute resolution process is a material condition of this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.
4. **Labor Code Compliance.** Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

5. **Rates.** These prevailing wage rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.
6. **Registration with DIR.** Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5
7. **Monitoring.** This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.
8. **Ownership of Work.** All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's Services, upon termination of this Agreement, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.
9. **Independent Contractor Status.** Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.
10. **Conflicts of Interest.** Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.
11. **Rebates, Kickbacks, or Other Unlawful Consideration.** Contractor warrants this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
12. **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after

the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Porterville
Transportation Department
291 N. Main Street
Porterville, CA 93257

To Contractor

13. Miscellaneous

13.1. Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13.2. Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

13.4. Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's prior written consent. Any attempt to do so will void. City's consent to one assignment, transfer or delegation shall not be deemed to be consent to any subsequent assignment, transfer or delegation.

13.5. Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Tulare.

13.6. Compliance with Law. Contractor shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

13.6.1. Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

13.6.2. Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, color, national origin,

handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.)

- 13.7. Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.
- 13.8. Business License.** Before the City signs this Agreement, Contractor shall obtain a City of Porterville Business License. Contractor shall maintain an active City of Porterville Business License during the term of this Agreement.
- 13.9. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 13.10. Construction of Agreement.** Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.
- 13.11. Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 13.12. Controlling Provisions.** In the case of any conflict between the terms of this Agreement and Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.
- 13.13. Entire Agreement.** This Agreement and the Attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.
- 13.14. Counterparts.** City and Contractor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.
- 13.15. Expenses for Enforcement.** Contractor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

14. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

The Parties agree to the full performance of these terms set forth here.

City of Porterville
291 N. Main Street
Porterville, CA 93257

Contractor

By: Martha A. Flores

By: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Federal Employer Tax ID No. _____

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No.XXX XXXXXXXXXXXXX
- B. Contractor Proposal
- C. Compensation



**CITY OF PORTERVILLE
CONTRACT ADDENDUM**

PROJECT TITLE: Trash Receptacles
RFP NO: RFP # 24/25-SR1986
ADDENDUM NO: 1
ISSUED: September 17, 2024

TO ALL BIDDERS,

Notice is hereby given that certain sections contained in the above referenced Contract Documents are amended, clarified, and/or deleted and are identified as Addendum No. 1 and attached hereto.

THEREFORE: All Bidders are required to note this Addendum No. 1, and all other Addendums, in the Acknowledgement of Addenda Page to be considered a responsible, responsive bidder.

Sincerely,
Richard Tree
Director of Transportation

Attachment

Attachment

Questions & Answers

1. Can I get a picture of the item you are looking for?

- a. The Bigbelly Element is a sample of the receptacles that would meet the goals of the project. <https://bigbelly.com/products/bigbelly-element>

2. Does it have to be BigBelly brand or it can be any brand that meets the specs?

- a. A brand that meets the specs.

3. Do the specifications include having a compactor feature, along with fullness indicators and software to notify when the bin needs to be emptied?

- a. No, however you may provide these features as options.

4. Scope Questions:

1. Who should the cover letter be addressed to?

2. Does the City want secure tubular locks? Or standard cylinder locks with 2 sided keys?

3. Does the City require the hopper door & foot pedal be self closing?

Terms Questions:

1. On RFP page 17, under "Costs and Payments; General", it calls out 30-45 days for payment terms. The example agreement on pg.73 calls out payment net-30. Are net-30 terms acceptable to the city?

2. There is no time specified for acceptance of goods on pg.19, could we suggest 1 week?

3. Does the requirement for construction contractors insurance on pg.34 apply if a bidder is only delivering a product, and will not be doing onsite work?

4. Under the indemnification section on pg.74, which party's legal counsel is being approved in section 4, is it the City's counsel, or the bidders counsel?

5. Under the insurance section on pg.74 which coverage requirements - since we're only delivering a product, we would like to know if our general liability insurance is \$1 million per occurrence, and \$2 million for general aggregate, with an added \$5 million umbrella, would that be sufficient coverage to meet the requirements outlined?

a.

1. Cover letter should be addressed to the Director of Transportation.
2. Tubular locks is preferred

3. Hopper door & foot pedal shall be self-closing
4. Net-30 terms are acceptable.
5. 1 week for acceptance of goods is acceptable.
6. General Liability and Automobile Insurance is required, please provide proposed limits.
7. Please disregard “with independent counsel approved by the City”
8. Yes, that is acceptable insurance.

All other terms and conditions remain unchanged.

END OF ADDENDUM No. 1

/s/ Richard Tree
Transportation Director

Note: This Addendum must be acknowledged in the Acknowledgement of Addenda page to be considered a Responsive bid.



RESPONSE TO:



**City of Porterville
Request for Proposal RFP No. 24/25-SR1986
Trash Receptacles**

**BID ISSUE DATE: August 27th, 2024
OFFER DUE: September 26th, 2024 by 2:00PM PST**

Table of Contents:

i. Cover Letter	3
ii. Experience Statement	4
iii. Procedures	5
iv. References	5
v. Receptacle Construction	6
vi. Price Proposal	10
vii. Estimated Delivery Schedule	13
viii. Required Forms	14
ix. Appendix	21

i. Cover Letter



Richard Tree
City of Porterville
Department of Transportation
291 North Main Street
Porterville, California 93257

Dear Director Tree,

It is our pleasure to take part in the City of Porterville's bid invitation for *RFP No. 24/25-SR1986 TRASH RECEPTACLES*.

During Bigbelly's 21 years as a global leader in public space waste and recycling solutions, we have continuously focused on engineering and user experience, refining our designs through 5 generations of product.

Serving over 2,500 customers in 60 countries, we've set the standard for what waste containment means, using an intuitive enclosed design to help cities beautify their urban landscapes, reducing overflows, trash picking, wind strewn litter, and pest access.

Our unique hopper enclosure and hands free foot pedal ensures that once the waste is deposited, it does not come out until the unit is serviced, keeping community spaces clean and healthy.

The Bigbelly portfolio is well equipped to address many of the common challenges with collecting waste from disparate transit systems, using accessories like wheeled lift bins to streamline collection, and wraps/message panels to post content relevant to transit riders.

We appreciate the opportunity to respond to this bid invitation in a manner that both meets and exceeds the requested specifications. We hope to work closely with Porterville to implement and support the City's vision for the future.

Most Sincerely,

Signed by:

B23903E415E1472...

Brian Phillips
President
150 A Street, Suite 103 | Needham, MA 02494 USA
www.bigbelly.com



ii. Experience Statement



Bigbelly was founded in 2003 with the goal of transforming one of the least efficient and most resource-intensive industries: public space waste collection. Cities often struggled with overflowing trash cans that created litter, health and safety issues.

The original product was simple; a solar powered compacting unit, providing 5X more capacity – enabling cities to reduce collections by 40-50%.

Between 2005-2020, Bigbelly developed 3rd, 4th, and 5th generation units, increasing the efficiency of our compacting stations, lowering their energy requirements, building a cloud based fullness notification software system called CLEAN, along with expanding the product line to include non-compacting units.

Through those 3 generations we have continually refined the design, adding a hands free foot pedal, improved hopper design, revised water channeling, inner lift bin compatibility, remote locking, and 4G cellular capabilities to name a few.

Starting in 2022 Bigbelly began offering a broader portfolio, including units without CLEAN software, in order to address a wider range of customer needs. Recognizing that even in its purest and simplest form (aptly named the *Element*), the design helps keep public spaces clean.

Bigbelly opened up its own in-house manufacturing facility in Massachusetts in the spring of 2023, to better control production, quality, and enhance customer service. The facility is the primary production location for Bigbelly-branded bins, from budget friendly to solar-powered smart waste options, creating local U.S. jobs.

In June of 2024, Bigbelly launched a new Smart Compost program. These solar powered bins are a cost-effective, access restricted, large-scale food waste collection system intended to supplement traditional drop-off locations, and curbside compost pickup.

Bigbelly has been awarded large-scale government contracts in major cities, parks and transit systems including: Atlanta, Boston, Chicago, Los Angeles, New York City, Philadelphia, San Francisco, San Diego, Dublin, Hamburg, London, Paris, and Stockholm, among many others. Bigbelly units are deployed in communities across over 60 countries, transforming operations, increasing productivity, and improving quality of life around the world.

iii. Procedures

The City of Porterville's order will be managed and executed by a combination of in-field support by Regional Sales Manager, Rafael Garcia, with additional support by our headquarters in Needham, MA.

All stations will be built at our in-house manufacturing facility in Methuen, MA. Bigbelly manufactures in-house to ensure production is properly managed, and all stations are documented and checked for quality before leaving the factory. When a unit is completed, it goes through a step-by-step inspection process with photo documentation. Once the unit itself is inspected, there is a second stage inspection done for the packaging process. The inspection records are saved in a database and can be accessed at any time for verification, or quality control purposes.

Porterville will be asked to inspect all stations upon delivery for any cosmetic damage that may have occurred in shipping.

Bigbelly will cover any component failures that arise from a manufacturer's defect and normal use for a period of 5 years from the shipment of the stations. Parts replacement and labor are covered at no cost.

iv. Customer References (3)

1. City of Wasco - 746 8th Street, Wasco, CA 93280:

Kameron Arnold - Deputy Director, Public Works
(661) 758-7204, kaarnold@cityofwasco.org.

2. City of San Luis Obispo - 25 Prado Road, San Luis Obispo, CA 93401:

Greg Cruce, Deputy Director Public Works
(805) 431-7164, gcruce@slocity.org.

3. San Diego MTS - 1255 Imperial Ave, Suite 1000, San Diego, CA 92101:

Rolando Montes, Superintendent of Facilities
(619) 595-4927, Rolando.Montes@sdmts.com.

v. Trash Receptacle Construction

Bigbelly will deliver Element non-compacting double stations for trash and recycling.

All station pricing will include:

Bigbelly Element, 32 gal non-compacting units.
Enclosed hopper & hands free foot pedal.
Tubular front door locks.
Wheeled inner lift bins.
Partial custom wrap (Front & Back Doors).
Interchangeable message panels.
5-Year limited warranty.



Material Construction:

The stations are constructed of corrosion resistant materials: galvanized powder coated steel doors, galvanized interior steel frame, cast aluminum handle, stainless steel foot pedal, and heavy duty plastic sideskins, hopper, and top bubble.

The custom wrap vinyl is produced by 3M and features an anti-graffiti coating.

Safety & Security:

Bigbelly is most well known for its patented solar powered compacting designs, which requires a physical barrier between the moving compactor and the public. This safety requirement led to the design of our “Hopper”, shown below on the left, ensuring no unauthorized user can access the inner bin.



Hoppers can also be configured on a non-compacting bin, to the same effect.

With this design, Bigbelly has 70,000+ components shipped, while boasting a safety record that remains at 100%.

The hopper utilizes a counterweight, and will automatically close when released, preventing pests from entering the unit.

Proper foot pedals are designed to initiate a slow "dampened" opening of the hopper so as not to injure a small child, or a person in a wheelchair (all units are ADA compliant).

In addition, Bigbelly has paid special attention to not having sharp edges/corners and pinch points that present risk of injury.

Spec Sheets:

Bigbelly Element

Fundamentally a better bin, the Bigbelly Element is uniquely equipped to keep waste contained and out of sight with its fully-enclosed Chute disposal interface. The Element is ideal to augment Smart or Sense deployments or for applications where bin fullness indication or CLEAN™ is not needed.

With an inner bin capacity of 50 gallons (189 L), the Element holds 1.7x more waste than a traditional bin. *** Elements built with hoppers will have 32gal of capacity.**

The Element can be deployed standalone or in combination with any other Bigbelly bin to form a multi-stream kiosk.

The Element is Bigbelly's simplest bin; it contains no electronics or sensors. Just the essentials.

Waste Interfaces and Streams

Hopper, Chute, or Open Disposal Interface
Waste, Single-Stream Recycling, or Compost



Hopper Disposal Interface
with Foot Pedal



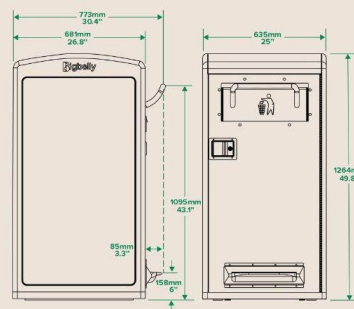
Open Disposal Interface



Chute Disposal Interface
with Foot Pedal

www.bigbelly.com | info@bigbelly.com | +1 888 820 0300 | © Big Belly Solar LLC 2023

Technical Specifications



Overall Machine Dimensions

- Height: 49.8" (1264 mm)
- Width: 25" (635 mm)
- Depth: 26.8" (681 mm)
- Handle Height (ADA Compliant): 43.1" (1095 mm)
- Weight: 150 lbs (68 kg)
- Shipping Weight: 180 lbs (82 kg)
- Bin Volume (Chute or Open): 50 gal (189 L)
- Bin Volume (Hopper): 32 gal (120 L)
- Bin Dimension (50 gal): 25" x 20" x 32.25" (635 mm x 508 mm x 819 mm)
- Bin Dimension (32 gal): 24" x 20.4" x 21.65" (609 mm x 518 mm x 549 mm)

Disposal Interface Dimensions

- Chute Opening: 16"W x 5.5"H x 15"D (406 mm x 140 mm x 381 mm)
- Hopper Opening: 16.5"W x 5"H x 8"D (419 mm x 127 mm x 203 mm)
- Open Interface Openings:
 - Waste: 16"W x 6"H (406 mm x 152 mm)
 - Single-Stream: 11"W x 5"H (279 mm x 127 mm)
 - Paper: 11"W x 2"H (279 mm x 51 mm)
 - Bottles and Cans: 5" dia. (127 mm dia.)




Bigbelly Element



FULLY ENCLOSED

Technical Specifications - Continued

Bigbelly Element Features

- Bigbelly's fully-enclosed Chute disposal interface, standard on Element bins, eliminates visible waste, rat and pest access, and windblown litter.
- The integrated Foot Pedal provides hands-free use.

Safety Features

- CE marked
- Soft-open Chute response with use of foot pedal
- Collection door automatically locks when closed
- No pinch points, sharp edges or corners

Durability

- Weather-resistant, UV-stabilized polyester powder-coat finish on all exterior parts

Materials

- RoHS compliant
- Galvanized sheet metal steel interior and exterior construction
- Heavy-duty, recycled plastic side panels for dent and scratch resistance
- Leak-proof interior bin made of low-density polyethylene (LDPE) plastic

Power and Electronics

- None

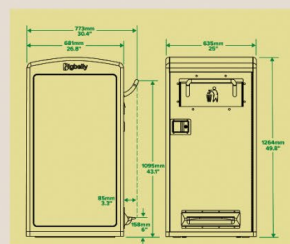
Options and Accessories

- Hopper disposal interface and Open disposal interface
- Custom Graphic Wraps, Message Panels, and Stickers
- Wheeled Interior Lift Bin (bar and comb styles)
- Ashtray and Stub-out Plates
- Security Plates
- Odor Mask

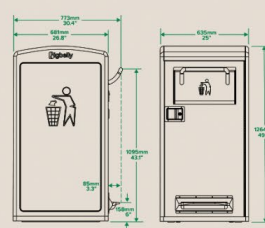
Multi-Stream Kiosk

Bigbelly bins can be configured as standalone bins or as multi-stream kiosks to accommodate each space's waste stream needs. Mix and match any number of different Bigbelly bin types to build a multi-stream kiosk. You can customize each station by selecting each bin's waste interface, CLEAN™ connectivity, capacity, and waste stream.

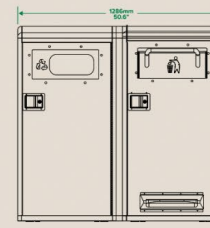
Example Configurations:



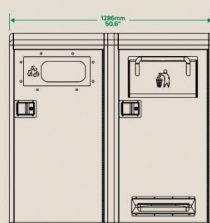
Element Single Station
Approximately 150 lbs (68kg)



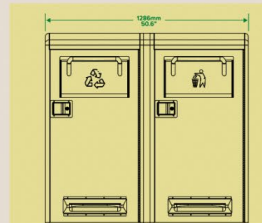
Smart Max Single Station
Approximately 270 lbs (122 kg)



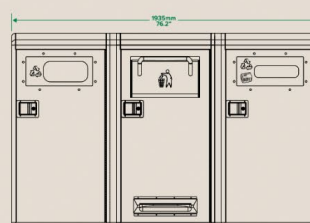
Sense Double Station
Approximately 294 lbs (133 kg)



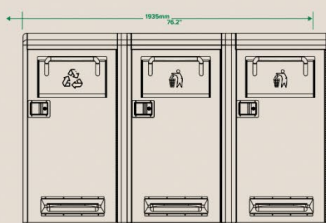
Smart / Smart Max Double Station
Approximately 414 lbs (188 kg)



Element/Element Double Station
Approximately 300 lbs (136 kg)

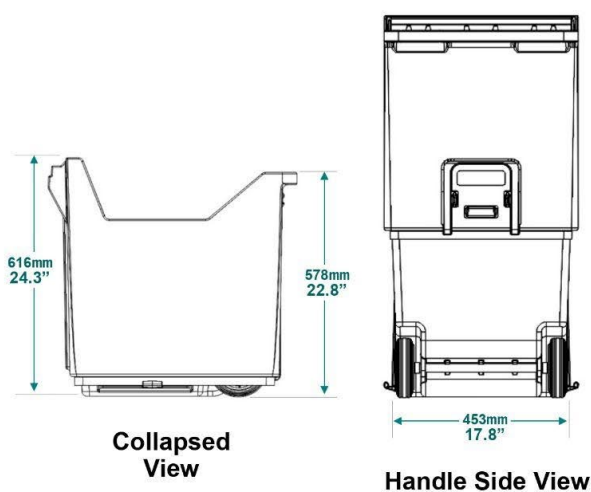
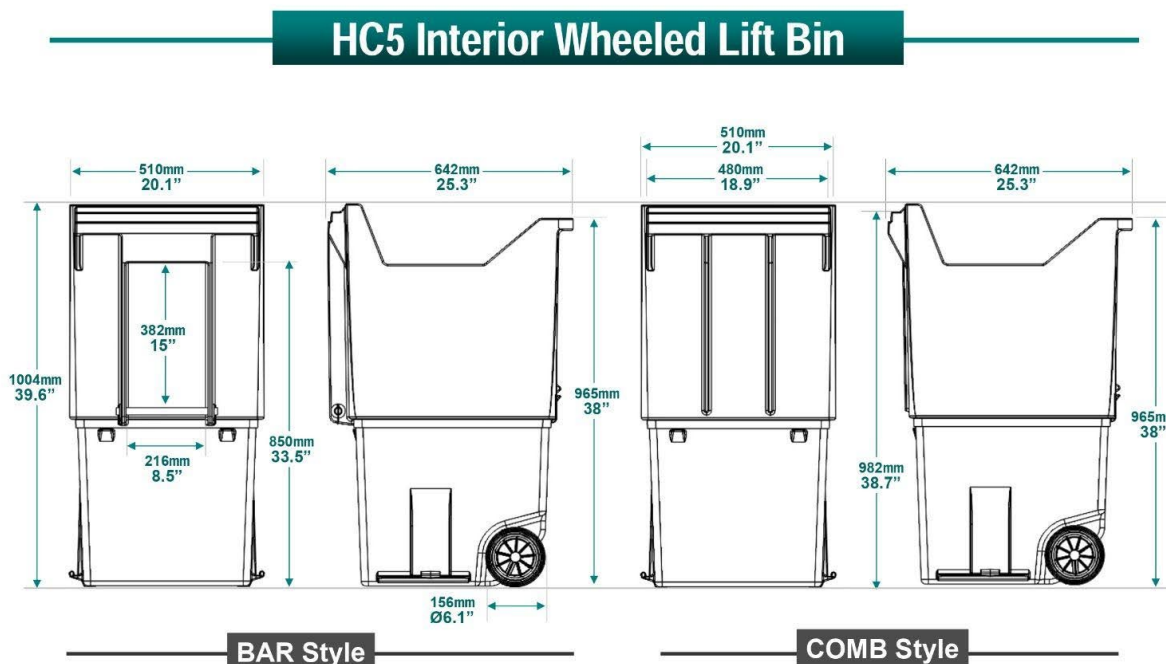


Smart / Smart Max / Smart Triple Station
Approximately 558 lbs (253 kg)



Smart Max Triple Station
Approximately 810 lbs (367 kg)

Wheeled Inner Lift Bin Spec:



Technical Specifications

Overall Lift Bin Dimensions

Height: 39.6" (1004mm)

Width: 20.1" (510mm)

Depth: 25.3" (642mm)

Handle Height: 38" (965mm); collapsed 22.8" (578mm)

Weight: 21 lbs (9.5kg)

Comb Style Lift Bin is EN840-1 compliant
Bar Style Lift Bin is ANSI Z245.60 compliant

Bin Volume: 30 gallons (113.5L) compacted trash;
approximately 150 gallons (568L) uncompacted trash

Materials

Linear low-density polyethylene (LLDPE)

Info_LiftBinSpecs(BB5)_2017Jun

Bigbelly Solar, Inc.
150 A Street – Suite 103
Needham, MA 02494 USA

Bigbelly
CHANGE YOUR SPACE
Sales@Bigbelly.com
Bigbelly.com

Toll-free: +1 888.820.0300
International: +1 781.444.6002
FAX: +1 781.444.5651



vi. Pricing

Pricing provided for 50 component lots (25 double stations). Shipping cost assumes 50 components - this represents the optimal shipping price per unit, as it fills an entire truckload. Quantities ordered under 50 components will be subject to increased shipping cost per unit.



September 24, 2024
Quote Number: Q45041-1
RG / RG

Prices valid for 60 days from the above date.

BIGBELLY SYSTEM QUOTATION

Prepared By:	Bill To:	Ship To:
Rafael Garcia Bigbelly Solar 150 A Street, Ste 103 Needham, MA 02494 (661) 600-5587 rgarcia@bigbelly.com	City of Porterville 291 North Main Street Porterville, CA 93257	City of Porterville

This order includes the following items:

QTY	ITEM	EXTENDED PRICE
25	Element Double Station with Hoppers, Foot Pedals, Lift Bins – Bar Style, Tubular Locks (Front Door), and Five-Year Warranty	\$93,680.00
50	Messaging Panel with Bigbelly insert	\$7,261.50
100	Partial Anti-Graffiti Custom Wrap (Front & Back)	\$14,245.00

Station pricing includes 7.5% volume discount based on quantity 50 component

Shipping & Handling:	\$7,470.00
Estimated Tax (9.25%):	\$10,654.75

Purchase Option	Total System Cost*:	\$122,656.50 USD
	Total with Estimated Tax:	\$133,311.25 USD
	Deposit due with order:	\$46,658.94 USD

* Total does not include applicable sales or use taxes.

Sincerely, Rafael Garcia
Bigbelly Solar, LLC

ACH Transfer Info: Cambridge Savings Bank • Acct Name: Big Belly Solar, LLC • Account # 11728865 • Routing # 211371120
Wire Transfer Info: Citibank • Acct Name: Cambridge Savings Bank • Account # 71160000000000093 • Routing # 031100209 • Int'l Swift # CITIUS33

Please include in wire payment notes: For Further Credit to 11728865, Big Belly Solar, LLC

All Purchase Orders must reference the above Quote Number (upper right).

This Quotation is subject to the attached Terms and Conditions of Sale, which are attached hereto and incorporated herein, and expressly acknowledged and accepted by Customer as signified by the duly authorized signature below.

ACCEPTED AND AGREED BY:

CUSTOMER

By: _____ Title: _____

Print Name: _____ Date: _____



September 24, 2024
Quote Number: Q45041-1
RG / RG

TERMS AND CONDITIONS OF SALE
Version 9.24.2018

The following Terms and Conditions of Sale ("Agreement") are applicable to any order placed by Customer pursuant to a valid Bigbelly Quotation ("Quotation") that is accepted by Bigbelly ("Order"). Acceptance by Customer of this Agreement, which shall be signified by Customer's duly authorized signature on the face hereof, shall be required for Bigbelly's acceptance of an Order.

1. **SCOPE OF AGREEMENT.** Bigbelly, upon acceptance of an Order placed by Customer, will supply the products to be delivered ("Products") and services to be performed ("Services") as specified in the Quotation to Customer, pursuant to this Agreement and its attachments. Bigbelly's acceptance of an Order is expressly limited to the terms and conditions of this Agreement notwithstanding any contrary provision contained in Customer's purchase orders, acknowledgements or other documents. The details of the Products and Services (e.g. quantity, price, and product specifications) shall be set forth in the relevant Quotation.
2. **ON-SITE SERVICES.** In the event any on-site services (such as installation, warranty repairs) are required as part of the Products and Services, the additional terms set forth in Attachment A attached hereto shall also apply.
3. **PRICE AND PAYMENT.** (a) The prices payable by Customer for the Products and Services by Bigbelly under this Agreement will be specified in the applicable Quotation. Unless otherwise expressly stated in a Quotation, all prices exclude shipping and applicable taxes, all of which are at Customer's expense. (b) Fees shall become payable upon Bigbelly's acceptance of an Order, unless otherwise determined by Bigbelly and agreed to in writing, and all payments shall be made without offset or deduction. Any amounts due from Customer under this Quotation or any related invoice, may not be withheld or offset by Customer against amounts due to Customer by Bigbelly for any reason. All late payments made outside of the agreed upon payment terms will be subject to interest at the rate of the lesser of (i) eighteen percent (18%) per annum or (ii) the highest amount allowed under applicable law. Where upfront payment is required, Bigbelly further reserves the right to withhold shipment of the Products and delay performance of the Services until full payment is made. Any failure by Bigbelly to provide an invoice in a timely manner shall not affect Customer's obligation to make payments. (c) Upon reasonable request by Bigbelly, Customer shall provide evidence of its financial capacity and such other information as Bigbelly reasonably requests to determine credit status or credits limits. (d) Customer shall provide notice within five (5) business days of the occurrence of any event which materially affects Customer's ability to perform its obligations under this Agreement.
4. **SHIPPING AND DELIVERY.** Unless otherwise specified and agreed in an Order, Products and Services will be delivered FOB Origin (Bigbelly's manufacturing facility) and will be shipped to Customer at the address provided via carriers selected by Bigbelly at the Customer's expense. The Parties shall mutually agree on any applicable delivery requirements for all Products and Services specified on an applicable Quotation before such Order will be processed. If no delivery requirements are otherwise specified and agreed, Bigbelly shall process any Order upon receipt of the signed Agreement and Customer's fulfillment of any other order processing requirements set forth by Bigbelly in its sole discretion.
5. **INSPECTION AND ACCEPTANCE.** Customer shall promptly inspect the Products and Services upon delivery or completion. In the event Products or Services are received damaged, defective or not to specification, Customer shall provide Bigbelly with prompt notice of the alleged deficiencies in the Products or performance of Services under the Quotation or this Agreement and Bigbelly shall have a reasonable opportunity to cure any such alleged non-conformance.
6. **SOFTWARE LICENSE.** Customer's use of the software provided as a Product and Service ("Software") is subject to the CLEAN Software License Agreement that accompanies delivery of the Software. All applicable terms, provisions and agreements set forth in the CLEAN Software License Agreement are hereby incorporated herein by reference with the same force and effect as though set forth herein. To the extent that the terms set forth in this Agreement are inconsistent with the terms of the CLEAN Software License Agreement, the terms set forth herein shall apply.
7. **WARRANTY.** Bigbelly warrants the Products and Services provided pursuant to a Quotation and this Agreement against manufacturer defects or defects in workmanship, under normal use and service, subject to the exclusions, limitations and conditions set forth in the Bigbelly Standard Limited Warranty.
8. **BREACH.** In addition to all other rights to which a party is entitled under this Agreement, if either party breaches any term of the Quotation or this Agreement, the non-breaching party shall have the right to: (a) terminate the Quotation immediately upon written notice to the other party; and (b) seek to obtain injunctive relief to prevent such breach or to otherwise enforce the terms of this Agreement. Failure to properly demand compliance or performance of any term of the Quotation or this Agreement shall not constitute a waiver of Bigbelly's rights hereunder and prior to any claim for damages being made for non-conformance or breach, Customer shall provide Bigbelly with prompt notice of any alleged deficiencies in the Products or performance of Services under the Quotation or this Agreement and Bigbelly shall have a reasonable opportunity to cure any such alleged non-conformance or breach.
9. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL BIGBELLY BE LIABLE HEREUNDER FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES. BIGBELLY'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT AND ANY QUOTATION SHALL BE LIMITED TO THE TOTAL FEES PAID BY CUSTOMER UNDER THE QUOTATION UPON WHICH A CLAIM IS BASED.
10. **INDEMNIFICATION.** Each party, as Indemnitor, shall indemnify, defend and hold harmless the other party, as Indemnitee, its officers, directors, employees, agents, subsidiaries, and other affiliates from and against any and all claims, damages, liabilities, and expenses (including attorney fees) arising from any third-party claim based on Indemnitor's (or its agent's) breach of any representation, warranty, covenant, agreement, or obligation under the Quotation or this Agreement, or Indemnitor's (or its agent's) grossly negligent and/or willful acts or omissions in carrying out its obligations under the Quotation or the Agreement; provided that in no event shall Bigbelly be responsible for any claims arising out of its compliance with instructions, requirements, or specifications provided by or required by Customer (including the use of information, artwork, logos, and/or trademarks provided by Customer). Neither party will be responsible for indemnifying another party hereto where the basis of the indemnity claim arises out of such other party's own negligence or willful misconduct.
11. **CUSTOMER MATERIALS AND DATA.** (a) Customer represents and warrants that any matter it furnishes for the Products or performance of the Services by Bigbelly does not infringe any copyright or trademark or other intellectual property rights of any third party nor does it otherwise violate any laws or infringe the rights of any third party. (b) Customer warrants that it has the right to use, and to have Bigbelly use on behalf of Customer, any data provided to Bigbelly by Customer, including specifically customer names, identifying information, addresses and other contact information and related personal information.
12. **INTELLECTUAL PROPERTY.** Any and all inventions, discoveries, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, know-how, work product and information or other intellectual property embodying proprietary data existing and owned by Bigbelly as of the date of the Quotation, or made or conceived by employees, consultants, representatives or agents of Bigbelly during the term of this Agreement, shall be and remain at all times the sole and exclusive property of Bigbelly. Customer will obtain no rights thereto other than the limited rights set forth in this Agreement. Without limiting the generality of the foregoing, the parties agree that Bigbelly will own all Software, including all modifications, upgrades and enhancements thereto made during the term of this Agreement.
13. **FORCE MAJEURE.** Any delay or failure of either party to perform its obligations (other than Customer's payment obligation) shall be excused if such failure is caused by an extraordinary event or occurrence beyond the control of the nonperforming party, such as acts of God, fires, floods, windstorms, explosions, natural disasters, wars and sabotage. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all action practicable to minimize the adverse impact of the delay on the other party.
14. **GOVERNING LAW.** Each Quotation and this Agreement shall be governed and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles. The Parties further agree (i) that any dispute, controversy or claim arising out of or related to this Agreement shall be brought and settled in the state or federal courts located in Boston, Massachusetts; (ii) to irrevocably submit to the exclusive jurisdiction of any such court; and (iii) to waive any right to a jury trial in any litigation arising out of or related to this Agreement.
15. **COMPLIANCE.** Each party shall comply with all state, federal and local laws and regulations applicable to its performance hereunder.
16. **ASSIGNMENT.** Customer may not assign its rights or obligations under this Agreement without the prior written consent of Bigbelly. Pursuant to a valid assignment, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.
17. **AMENDMENT AND WAIVER.** This Agreement shall not be amended or modified in any way except by a subsequent written agreement signed by authorized persons of both Parties. Any amendment or waiver effected in accordance with this section shall be binding upon the Parties and their respective successors and assigns. The waiver by a Party of any breach by the other Party will not operate or be interpreted as a waiver of any other or subsequent breach, nor shall the failure or delay in exercising any right or seeking any remedy hereunder operate as a waiver thereof.
18. **SEVERABILITY.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, and the remaining provisions of this Agreement shall continue in full force and effect and not be affected thereby.
19. **SURVIVAL.** In the event any provision of the Quotation or this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of the Order or this Agreement will remain in full force and effect. All sections herein relating to payment, ownership, confidentiality, indemnification and duties of defense, representations and warranties, waiver, waiver of jury trial and provisions which by their terms extend beyond the Term shall survive the termination of the Order and this Agreement.
20. **NOTICE.** Any notice required to be delivered pursuant to this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered mail or certified mail, return receipt requested, to the addresses on the Quotation or to such address as either party may designate in the future.
21. **ENTIRE AGREEMENT.** Each Quotation, together with this Agreement including the Attachments, constitute the entire agreement between the Parties regarding the subject matter hereof and merges and supersedes all prior agreements, oral and written, understandings, commitments and writings. Any Order, purchase order or other ordering or acceptance document issued by Customer is for administrative purposes only and does not form part of this Agreement or amend the terms hereof. In the event of any ambiguity or conflict between any of the terms and conditions contained in this Agreement and the terms and conditions contained in an Order, the terms and conditions of this Agreement shall control. The Quotation or this Agreement may not be amended, supplemented, changed, or modified, except by agreement in writing signed by the parties to be bound thereby.
22. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument.

v2024Mar26
150 A St., Suite 103 • Needham, MA 02494

www.bigbelly.com

T: 888-820-0300 • F: 781-444-5651



September 24, 2024
Quote Number: Q45041-1
RG / RG

ATTACHMENT A
ADDITIONAL TERMS FOR ON-SITE SERVICES

In the event Bigbelly or its authorized service providers must come on-site to Customer's property in order to perform certain services as part of the Products or Services, the Parties agree that the following terms and conditions shall also apply, as applicable.

For purposes of this Attachment A, the 'Agreement' shall mean the Terms and Conditions of Sale executed between the Parties to which this Attachment A is affixed. The meaning of capitalized and undefined terms appearing herein shall be as set forth in the Agreement unless otherwise indicated. In the event of a conflict between this Attachment A and the Agreement, the terms and conditions of this Attachment A shall prevail solely with respect to the subject matter herein. The terms and conditions of this Attachment A are hereby incorporated into the Agreement by reference.

1. **INFORMATION AND ACCESS.** Customer agrees that Bigbelly's ability perform the Services under the Agreement in a timely manner is dependent upon access to Customer's installation information and locations. Deadlines imposed by the Agreement shall be extended in the event that Customer fails to provide such information and/or access to Bigbelly in a timely manner.
2. **SITE PREPARATION.** Customer agrees to provide a poured concrete pad if the intended installation surface does not meet Bigbelly's specifications. If Customer's installation surface does not meet such specifications, any additional cost associated with Bigbelly's efforts to properly prepare the surface will be at Customer's expense. It is the Customer's responsibility to remove, at Customer's expense, existing bins or any other items from the locations where Bigbelly stations will be installed.
3. **INSTALLATION.** Bigbelly will install the equipment at mutually agreed upon locations, including semi-permanent attachment to the ground. Installation will be in accordance with the delivery and installation schedule agreed to by the Parties prior to commencement of the Services.
4. **INSURANCE.** Bigbelly shall maintain, during its performance of the Services provided hereunder, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by Bigbelly. Bigbelly shall furnish copies of such insurance policies upon request.

vii. Estimated Delivery Schedule:

- o **Oct 15th:** Project award (anticipated).
- o **Nov 1:** Contract begins.
- o **Nov 15th:** Porterville issues PO, or signed quote to Bigbelly to move forward with an order.
- o **December 30th:** Stations ship from Methuen, MA.
- o **January 10-14:** Stations delivered & inspected for shipping damage. Receiver will document any packaging damage, and open packaging to inspect damage. Report any shipping damage to Bigbelly within (3) business days.

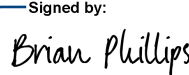
viii. Required Forms

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

The Proposer acknowledges it has received and read the following Addenda:

Addendum # <u>1</u>	Signature <u> B23903E415E1472...</u>
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____
Addendum # _____	Signature _____

Company: Big Belly Solar, LLC

Name: Brian Phillips

Title: President

Signature: 
B23903E415E1472...

Date: 9/25/2024

Form B**DEBARMENT AND SUSPENSION CERTIFICATION**

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☒ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: **Big Belly Solar, LLC**

Name: **Brian Phillips**

Title: **President** Signed by:

Signature: 

Date: **9/25/2024** E23903E415E1472...

Page 66 of 80
City of Porterville
Trash Receptacles



Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☒ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

N/A

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

☐ Cannot comply with the requirements of 49 U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Big Belly Solar, LLC

Name: Brian Phillips

Title: President Signed by:

Signature: Brian Phillips
B23903E415E1472...

Date: 9/25/2024

Page 67 of 80
City of Porterville
Trash Receptacles

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF ~~CALIFORNIA~~ **Massachusetts**

COUNTY OF Norfolk

Brian Phillips declares and says:

1. That he/she is the (owner, partner, representative, or agent) ~~of~~ **President of Big Belly Solar, LLC**, hereinafter referred to as (CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Big Belly Solar, LLC

Name: Brian Phillips

Title: President Signed by:

Signature: Brian Phillips
B23903E415E1472...

Date: 9/25/2024

Page 68 of 80
City of Porterville
Trash Receptacles

Form E**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Big Belly Solar, LLC

Name: Brian Phillips

Title: President Signed by:

Signature: 

Date: 9/25/2024 B23903E415E1472...

Page 69 of 80
City of Porterville
Trash Receptacles

Form F**TAX LIABILITY CERTIFICATION**

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Big Belly Solar, LLC

Name: Brian Phillips

Title: President Signed by:

Signature: Brian Phillips
B23903E415E1472...

Date: 9/25/2024

Page 70 of 80
City of Porterville
Trash Receptacles



Form G

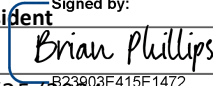
ACKNOWLEDGEMENT OF “BEST VALUE” SELECTION PROCESS

PROPOSER hereby acknowledges that the selection process under this RFP will evaluate Proposals on a “Best Value” basis, which the Federal Transit Administration’s (FTA) Best Practices Manual defines as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

As a result, PROPOSER further acknowledges that pricing will not be the sole basis upon which Proposals are evaluated.

An individual authorized to bind the PROPOSER to this Agreement must sign below acknowledging and understanding of the foregoing.

Company: Big Belly Solar, LLC
 Name: Brian Phillips
 Title: President Signed by:
 Signature: 
 Date: 9/25/2024 B23903E415E1472...

ix. Appendix

BIGBELLY LIMITED WARRANTY for CAPITAL PURCHASE CUSTOMERS LOCATED IN THE UNITED STATES & CANADA

Big Belly Solar, LLC ("Bigbelly") provides this limited warranty ("Warranty") to Capital Purchase Customers (i) of new and certified used Bigbelly High Capacity (HC) and/or Standard Capacity (SC) stations ("Stations"), (ii) of related Bigbelly-authorized component parts, including batteries and accessory products sold by Bigbelly for use with Bigbelly Stations (collectively, "Parts"), and (iii) of any repairs performed by Bigbelly or an authorized Bigbelly service provider on a Station or Part pursuant to this Warranty ("Service Repairs"), if such Stations and/or Parts are purchased for use in and installed in the United States and/or Canada.

Warranty on Stations and Parts. Subject to the exclusions, limitations, and conditions stated herein, Bigbelly warrants new or certified used Stations and non-consumable Parts against defects in materials and workmanship for a period of five (5) years from the date of delivery of the original Station or Part from Bigbelly to the Capital Purchase Customer. Unless Customer provides written notice of rejection within three (3) business days of delivery, Customer will be deemed to have accepted Stations and Parts upon delivery. Consumable Parts (including but not limited to bags, hopper liners, and odor masks), and wraps, are not covered by and are excluded from this Warranty.

Warranty on Service Repairs. Subject to the exclusions, limitations and conditions stated herein, Bigbelly warrants all Service Repairs performed under this Warranty against defects in materials and workmanship for a period of five (5) years from the date of delivery of the original Station or Part from Bigbelly to the Capital Purchase Customer.

Replacements or Service Repairs of Stations or Parts that are necessary due to a loss of functionality or performance that results notwithstanding the Customer's normal and authorized use of the Bigbelly Station or Part, and which renders the Station or Part unable to meet normal operational standards (such as a compactor failure; electronics failure, including controller board, sensors, and battery failures; solar panel failure; broken or non-functional hoppers; broken or fatigued doors; broken keys and locks; broken or non-functioning foot pedals; broken or loose hopper handles; rust damage that is determined to have been caused by improper galvanization; rodent (mice, rats and squirrels) intrusion that causes damage to functional parts; damage caused by water ingress; wraps that were improperly applied during manufacturing) are covered by this Warranty. Bigbelly offers no guarantee or warranty of any type, however, on field-applied wraps. Bigbelly shall, in its sole and exclusive discretion, determine whether any such replacement or Service Repair was made necessary due to the Customer's misuse or unauthorized use of the affected the Station or Part, in which case this Warranty shall not apply.

This Warranty does not cover damage to a Bigbelly Station or Part caused by any of the following: all external causes such as (without limitation) vehicle strikes, tree damage, graffiti, dropping, accident, vandalism, collision, fire, flooding or immersion in water; dents, dings, scratches, "crazing", or other cosmetic damage not caused by Bigbelly that occurs to side panels, front doors, rear panels, solar bubble clouding or cracks, or optional wraps; or otherwise using the Station or Part contrary to the instructions and warnings contained in the user materials issued by Bigbelly (the "User Materials"); altering or modifying the Station or Part; deterioration of paint, trim, and appearance items that results from use and/or exposure to the elements; rust or corrosion that does not inhibit operation; cleaning with a high-pressure water system, abrasives, or solvents; exposure to environmental conditions beyond the limits stated in the User Materials; failure to properly maintain or improperly servicing the Station or Part; damage caused by use of non-Bigbelly parts or accessories; improper charging of the Bigbelly battery; or shipping with methods other than those recommended by Bigbelly. See the User Materials for proper use, maintenance, and charging of Stations and Parts.

Before making a Warranty claim or request, Customer shall first respond to routine maintenance and repair issues it observes or of which it is notified via automated CLEAN alerts. Customer's personnel will likely be in the best position to investigate and address these issues, and Customer will use best efforts to resolve these issues, first-hand, in-the-field. If not resolved at that level, Bigbelly Customer Support will be available to provide Customer's personnel with further troubleshooting and repair assistance. For issues that still cannot be resolved at this level, Bigbelly Customer Support will provide guidance on next steps, including dispatching a technician if deemed necessary.



To obtain repair under this Warranty, the Capital Purchase Customer must contact Bigbelly or an authorized service provider within the applicable Warranty period. If you are unable to contact your local authorized service provider, you may contact Bigbelly toll free at (888-820-0300). When contacting Bigbelly or an authorized service provider, please be prepared to describe the problem and provide the serial number(s) of the affected Bigbelly Station(s).

Bigbelly may provide the Capital Purchase Customer with a Return Materials Authorization number ("RMA#"). If an RMA# is provided, then the Capital Purchase Customer shall (within a reasonable period of time, not to exceed 30 days) ship and deliver the defective Station and/or Part to Bigbelly or to an authorized service provider (as instructed by Bigbelly), properly packaged (so as to prevent damage during shipment), and with the RMA# written on the outside of the packaging. Bigbelly neither assumes (nor authorizes anyone to assume for it) any other obligation or liability in connection with a Station, Part, or Service Repair, or this Warranty.

For replacements of Stations and Parts and Service Repairs that are found to be covered by this Warranty, Bigbelly shall, within a reasonable period of time under the circumstances, and at Bigbelly's cost and expense (including shipping costs, with Bigbelly bearing the risk of loss during such shipment) replace or repair, at its election, the defective Stations and/or Parts with new or reconditioned Stations and/or Parts of the same or similar style and with upgraded software, if appropriate, subject to the exclusions, limitations, and conditions stated herein. For all replacements of Stations and Parts and Services Repairs requested by Customer which are found not to be covered by this Warranty, Customer shall be responsible for the costs of such replacements and Services Repairs (including shipping costs), which shall be separately invoiced to customer by Bigbelly, and Customer shall bear the risk of loss during such shipments.

Bigbelly is not responsible for any loss of use of a Station or Part, or for any inconvenience or other loss or damage which might result from, any defect in a Station or Part, or from a Service Repair, or for any other incidental or consequential damages the Connect Services Customer may suffer or incur as a result of any defect in a Station, Part, or Service Repair.

THIS WARRANTY IS THE ONLY WARRANTY APPLICABLE, AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO, BIGBELLY STATIONS, PARTS, AND SERVICE REPAIRS. BIGBELLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Please protect your investment against shipping damages and liability by inspecting all Stations and Parts upon delivery before signing for them with the shipping company.



All Together Better

October 1, 2024
Quote Number: Q45041-2
RG / RG

Prices valid for 60 days from the above date.

BIGBELLY SYSTEM QUOTATION

Prepared By:	Bill To:	Ship To:
Rafael Garcia Bigbelly Solar 150 A Street. Ste 103 Needham, MA 02494 (661) 600-5587 rgarcia@bigbelly.com	City of Porterville 291 North Main Street Porterville, CA 93257	City of Porterville

This order includes the following items:

QTY	ITEM	EXTENDED PRICE
50	Element Double Station with Hoppers, Foot Pedals, Lift Bins – Bar Style, Tubular Locks (Front Door), and Five-Year Warranty	\$187,497.00
100	Messaging Panel with Bigbelly insert	\$14,523.00
200	Partial Anti-Graffiti Custom Wrap (Front & Back)	\$28,490.00

Station pricing includes 7.5% volume discount based on quantity 100 component

Shipping & Handling (one time): \$14,940.00
Estimated Tax (9.25%): \$21,322.18

Purchase Option

Total System Cost*: \$245,450.00 USD
Total with Estimated Tax: \$266,772.18 USD
Deposit due with order: \$93,370.26 USD

* Total does not include applicable sales or use taxes.

Sincerely, Rafael Garcia
Bigbelly Solar, LLC

ACH Transfer Info: Cambridge Savings Bank ▪ Acct Name: Big Belly Solar, LLC ▪ Account # 11728865 ▪ Routing # 211371120

Wire Transfer Info: Citibank ▪ Acct Name: Cambridge Savings Bank ▪ Account # 71160000000000093 ▪ Routing # 031100209 ▪ Int'l Swift # CITIUS33

Please include in wire payment notes: For Further Credit to 11728865, Big Belly Solar, LLC

All Purchase Orders must reference the above Quote Number (upper right).

This Quotation is subject to the attached Terms and Conditions of Sale, which are attached hereto and incorporated herein, and expressly acknowledged and accepted by Customer as signified by the duly authorized signature below.

ACCEPTED AND AGREED BY:

CUSTOMER

By: _____

Title: _____

Print Name: _____

Date: _____

TERMS AND CONDITIONS OF SALE
Version 9.24.2018

The following Terms and Conditions of Sale ("Agreement") are applicable to any order placed by Customer pursuant to a valid Bigbelly Quotation ("Quotation") that is accepted by Bigbelly ("Order"). Acceptance by Customer of this Agreement, which shall be signified by Customer's duly authorized signature on the face hereof, shall be required for Bigbelly's acceptance of an Order.

1. **SCOPE OF AGREEMENT.** Bigbelly, upon acceptance of an Order placed by Customer, will supply the products to be delivered ("Products") and services to be performed ("Services") as specified in the Quotation to Customer, pursuant to this Agreement and its attachments. Bigbelly's acceptance of an Order is expressly limited to the terms and conditions of this Agreement notwithstanding any contrary provision contained in Customer's purchase orders, acknowledgements or other documents. The details of the Products and Services (e.g. quantity, price, and product specifications) shall be set forth in the relevant Quotation.
2. **ON-SITE SERVICES.** In the event any on-site services (such as installation, warranty repairs) are required as part of the Products and Services, the additional terms set forth in Attachment A attached hereto shall also apply.
3. **PRICE AND PAYMENT.** (a) The prices payable by Customer for the Products and Services by Bigbelly under this Agreement will be specified in the applicable Quotation. Unless otherwise expressly stated in a Quotation, all prices exclude shipping and applicable taxes, all of which are at Customer's expense. (b) Fees shall become payable upon Bigbelly's acceptance of an Order, unless otherwise determined by Bigbelly and agreed to in writing, and all payments shall be made without offset or deduction. Any amounts due from Customer under this Quotation or any related invoice, may not be withheld or offset by Customer against amounts due to Customer by Bigbelly for any reason. All late payments made outside of the agreed upon payment terms will be subject to interest at the rate of the lesser of (i) eighteen percent (18%) per annum or (ii) the highest amount allowed under applicable law. Where upfront payment is required, Bigbelly further reserves the right to withhold shipment of the Products and delay performance of the Services until full payment is made. Any failure by Bigbelly to provide an invoice in a timely manner shall not affect Customer's obligation to make payments. (c) Upon reasonable request by Bigbelly, Customer shall provide evidence of its financial capacity and such other information as Bigbelly reasonably requests to determine credit status or credits limits. (d) Customer shall provide notice within five (5) business days of the occurrence of any event which materially affects Customer's ability to perform its obligations under this Agreement.
4. **SHIPPING AND DELIVERY.** Unless otherwise specified and agreed in an Order, Products and Services will be delivered FOB Origin (Bigbelly's manufacturing facility) and will be shipped to Customer at the address provided via carriers selected by Bigbelly at the Customer's expense. The Parties shall mutually agree on any applicable delivery requirements for all Products and Services specified on an applicable Quotation before such Order will be processed. If no delivery requirements are otherwise specified and agreed, Bigbelly shall process any Order upon receipt of the signed Agreement and Customer's fulfillment of any other order processing requirements set forth by Bigbelly in its sole discretion.
5. **INSPECTION AND ACCEPTANCE.** Customer shall promptly inspect the Products and Services upon delivery or completion. In the event Products or Services are received damaged, defective or not to specification, Customer shall provide Bigbelly with prompt notice of the alleged deficiencies in the Products or performance of Services under the Quotation or this Agreement and Bigbelly shall have a reasonable opportunity to cure any such alleged non-conformance.
6. **SOFTWARE LICENSE.** Customer's use of the software provided as a Product and Service ("Software") is subject to the CLEAN Software License Agreement that accompanies delivery of the Software. All applicable terms, provisions and agreements set forth in the CLEAN Software License Agreement are hereby incorporated herein by reference with the same force and effect as though fully set forth herein. To the extent that the terms set forth in this Agreement are inconsistent with the terms of the CLEAN Software License Agreement, the terms set forth herein shall apply.
7. **WARRANTY.** Bigbelly warrants the Products and Services provided pursuant to a Quotation and this Agreement against manufacturer defects or defects in workmanship, under normal use and service, subject to the exclusions, limitations and conditions set forth in the Bigbelly Standard Limited Warranty.
8. **BREACH.** In addition to all other rights to which a party is entitled under this Agreement, if either party breaches any term of the Quotation or this Agreement, the non-breaching party shall have the right to: (a) terminate the Quotation immediately upon written notice to the other party; and (b) seek to obtain injunctive relief to prevent such breach or to otherwise enforce the terms of this Agreement. Failure to properly demand compliance or performance of any term of the Quotation or this Agreement shall not constitute a waiver of Bigbelly's rights hereunder and prior to any claim for damages being made for non-conformance or breach, Customer shall provide Bigbelly with prompt notice of any alleged deficiencies in the Products or performance of Services under the Quotation or this Agreement and Bigbelly shall have a reasonable opportunity to cure any such alleged non-conformance or breach.
9. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL BIGBELLY BE LIABLE HEREUNDER FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES. BIGBELLY'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT AND ANY QUOTATION SHALL BE LIMITED TO THE TOTAL FEES PAID BY CUSTOMER UNDER THE QUOTATION UPON WHICH A CLAIM IS BASED.
10. **INDEMNIFICATION.** Each party, as Indemnitor, shall indemnify, defend and hold harmless the other party, as Indemnitee, its officers, directors, employees, agents, subsidiaries, and other affiliates from and against any and all claims, damages, liabilities, and expenses (including attorney fees) arising from any third-party claim based on Indemnitor's (or its agent's) breach of any representation, warranty, covenant, agreement, or obligation under the Quotation or this Agreement, or Indemnitor's (or its agent's) grossly negligent and/or willful acts or omissions in carrying out its obligations under the Quotation or the Agreement; provided that in no event shall Bigbelly be responsible for any claims arising out of its compliance with instructions, requirements, or specifications provided by or required by Customer (including the use of information, artwork, logos, and/or trademarks provided by Customer). Neither party will be responsible for indemnifying another party hereto where the basis of the indemnity claim arises out of such other party's own negligence or willful misconduct.
11. **CUSTOMER MATERIALS AND DATA.** (a) Customer represents and warrants that any matter it furnishes for the Products or performance of the Services by Bigbelly does not infringe any copyright or trademark or other intellectual property rights of any third party nor does it otherwise violate any laws or infringe the rights of any third party. (b) Customer warrants that it has the right to use, and to have Bigbelly use on behalf of Customer, any data provided to Bigbelly by Customer, including specifically customer names, identifying information, addresses and other contact information and related personal information.
12. **INTELLECTUAL PROPERTY.** Any and all inventions, discoveries, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, know-how, work product and information or other intellectual property embodying proprietary data existing and owned by Bigbelly as of the date of the Quotation, or made or conceived by employees, consultants, representatives or agents of Bigbelly during the term of this Agreement, shall be and remain at all times the sole and exclusive property of Bigbelly. Customer will obtain no rights thereto other than the limited rights set forth in this Agreement. Without limiting the generality of the foregoing, the parties agree that Bigbelly will own all Software, including all modifications, upgrades and enhancements thereto made during the term of this Agreement.
13. **FORCE MAJEURE.** Any delay or failure of either party to perform its obligations (other than Customer's payment obligation) shall be excused if such failure is caused by an extraordinary event or occurrence beyond the control of the nonperforming party, such as acts of God, fires, floods, windstorms, explosions, natural disasters, wars and sabotage. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all action practicable to minimize the adverse impact of the delay on the other party.
14. **GOVERNING LAW.** Each Quotation and this Agreement shall be governed and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles. The Parties further agree (i) that any dispute, controversy or claim arising out of or related to this Agreement shall be brought and settled in the state or federal courts located in Boston, Massachusetts; (ii) to irrevocably submit to the exclusive jurisdiction of any such court; and (iii) to waive any right to a jury trial in any litigation arising out of or related to this Agreement.
15. **COMPLIANCE.** Each party shall comply with all state, federal and local laws and regulations applicable to its performance hereunder.
16. **ASSIGNMENT.** Customer may not assign its rights or obligations under this Agreement without the prior written consent of Bigbelly. Pursuant to a valid assignment, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.
17. **AMENDMENT AND WAIVER.** This Agreement shall not be amended or modified in any way except by a subsequent written agreement signed by authorized persons of both Parties. Any amendment or waiver effected in accordance with this section shall be binding upon the Parties and their respective successors and assigns. The waiver by a Party of any breach by the other Party will not operate or be interpreted as a waiver of any other or subsequent breach, nor shall the failure or delay in exercising any right or seeking any remedy hereunder operate as a waiver thereof.
18. **SEVERABILITY.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, and the remaining provisions of this Agreement shall continue in full force and effect and not be affected thereby.
19. **SURVIVAL.** In the event any provision of the Quotation or this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of the Order or this Agreement will remain in full force and effect. All sections herein relating to payment, ownership, confidentiality, indemnification and duties of defense, representations and warranties, waiver, waiver of jury trial and provisions which by their terms extend beyond the Term shall survive the termination of the Order and this Agreement.
20. **NOTICE.** Any notice required to be delivered pursuant to this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered mail or certified mail, return receipt requested, to the addresses on the Quotation or to such address as either party may designate in the future.
21. **ENTIRE AGREEMENT.** Each Quotation, together with this Agreement including the Attachments, constitute the entire agreement between the Parties regarding the subject matter hereof and merges and supersedes all prior agreements, oral and written, understandings, commitments and writings. Any Order, purchase order or other ordering or acceptance document issued by Customer is for administrative purposes only and does not form part of this Agreement or amend the terms hereof. In the event of any ambiguity or conflict between any of the terms and conditions contained in this Agreement and the terms and conditions contained in an Order, the terms and conditions of this Agreement shall control. The Quotation or this Agreement may not be amended, supplemented, changed, or modified, except by agreement in writing signed by the parties to be bound thereby.
22. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument.

ATTACHMENT A
ADDITIONAL TERMS FOR ON-SITE SERVICES

In the event Bigbelly or its authorized service providers must come on-site to Customer's property in order to perform certain services as part of the Products or Services, the Parties agree that the following terms and conditions shall also apply, as applicable.

For purposes of this Attachment A, the 'Agreement' shall mean the Terms and Conditions of Sale executed between the Parties to which this Attachment A is affixed. The meaning of capitalized and undefined terms appearing herein shall be as set forth in the Agreement unless otherwise indicated. In the event of a conflict between this Attachment A and the Agreement, the terms and conditions of this Attachment A shall prevail solely with respect to the subject matter herein. The terms and conditions of this Attachment A are hereby incorporated into the Agreement by reference.

1. **INFORMATION AND ACCESS.** Customer agrees that Bigbelly's ability to perform the Services under the Agreement in a timely manner is dependent upon access to Customer's installation information and locations. Deadlines imposed by the Agreement shall be extended in the event that Customer fails to provide such information and/or access to Bigbelly in a timely manner.
2. **SITE PREPARATION.** Customer agrees to provide a poured concrete pad if the intended installation surface does not meet Bigbelly's specifications. If Customer's installation surface does not meet such specifications, any additional cost associated with Bigbelly's efforts to properly prepare the surface will be at Customer's expense. It is the Customer's responsibility to remove, at Customer's expense, existing bins or any other items from the locations where Bigbelly stations will be installed.
3. **INSTALLATION.** Bigbelly will install the equipment at mutually agreed upon locations, including semi-permanent attachment to the ground. Installation will be in accordance with the delivery and installation schedule agreed to by the Parties prior to commencement of the Services.
4. **INSURANCE.** Bigbelly shall maintain, during its performance of the Services provided hereunder, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by Bigbelly. Bigbelly shall furnish copies of such insurance policies upon request.

Exhibit A
FTA Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention.** Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute,

FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; (b) exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (d) federal

transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.”
6. Equal Employment Opportunity for Construction Activities. When undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any

federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.

- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within

ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.

- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.
- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381);

- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL

Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.

- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.
- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from

receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.

- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S.

FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned

vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products

used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42

U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.

2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. **Environmental Justice.** Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic

Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.

7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that

maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject

data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting

system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.
3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and

administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Request for Authorization to Extend the Zero-Fare Program for Public Transportation Services

SOURCE: Public Works

COMMENT: The City of Porterville's zero-fare program, initially approved on June 18, 2024, for a 90-day period and later extended on September 17, 2024, has effectively promoted ridership and increased accessibility to essential services. This program launched as part of the City's transition to direct management of its public transportation services, has been well-received, with significant increases in ridership, operational efficiency, and community engagement.

Given these positive outcomes, staff recommends extending the zero-fare program until June 30, 2025, to continue supporting community access to public transportation and fostering operational benefits. Extending the program aligns with the City's strategic goals of maintaining essential transit services and facilitating a smooth transition to a future fare system.

Since implementation, the program has shown the following impacts:

1. **Increased Ridership:** The zero-fare program has contributed to significant growth in public transportation usage. From July to October 2024, fixed-route ridership increased from 77,738 to 132,501 compared to the same period in 2023, marking a 70.4% increase. Similarly, demand response ridership rose from 1,330 to 1,989 during the same timeframe, reflecting a 49.6% increase. These results indicate the program's success in attracting more riders and meeting community transportation needs.
2. **Enhanced Accessibility:** The zero-fare program has improved access for residents to vital services, such as employment, healthcare, and education, positively impacting community well-being.
3. **Operational Focus and Transition Support:** The zero-fare approach has facilitated operational adjustments without the administrative burden of fare collection, supporting a smoother transition to in-house management.

4. Public Awareness and Goodwill: The program has fostered a positive relationship with riders, encouraging public transportation use and expanding community awareness.

The increase in ridership has potential long-term financial benefits for the City. Based on the FTA's Section 5307 apportionment formula, which allocates 50% of funding based on bus vehicle revenue miles (BVRM), the rise in ridership could contribute to a higher allocation of future federal funding. With the significant growth observed, Porterville could expect an estimated \$1,124,806 increase in future FTA funding. This additional funding would support sustainable growth in transit operations and enhance the city's ability to maintain and expand services.

The upcoming six months will allow the City to complete ongoing planning efforts with the Tulare County Association of Governments (TCAG) for a regional fare collection system, including exploring grant opportunities for a sustainable fare system. Extending the zero-fare program until June 30, 2025, aligns with these strategic goals, giving ample time to ensure a smooth transition back to a fare system while maintaining essential transportation access for Porterville residents.

Extending the zero-fare program through June 30, 2025, is estimated to cost approximately \$300,000, which will be covered by Local Transportation Funds (LTF), ensuring that the program remains budget-neutral.

RECOMMENDATION: That the City Council:

1. Approve the extension of the Zero-Fare Program for fixed-route and ADA paratransit services until June 30, 2025;
2. Authorize staff to adjust operational procedures as needed and communicate the program's continuation to the public; and
3. Direct staff to monitor the program's impacts and provide a final report at the end of the extension period.

ATTACHMENTS:

1. June 18, 2024 Staff Report
2. September 17, 2024 Staff Report

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – JUNE 18, 2024

SUBJECT: Request for Approval of a 90-Day Zero-Fare Program for Public Transportation Services Transition

SOURCE: Public Works

COMMENT: Starting July 1, 2024, the City of Porterville will assume responsibility for the administration of its public transportation services. The purpose of this staff report is to request the Council's approval for implementing a 90-day zero-fare program for fixed route and ADA paratransit services, effective from July 1, 2024, to September 29, 2024. The administration of Porterville's public transportation services is undergoing a significant change and this program is designed to assist staff during this transition period. This process involves multiple logistical, operational, and administrative changes that require focused attention and resources from staff. During this transition, it is crucial to ensure a smooth and efficient restart of services to minimize disruptions for our residents.

Implementing a 90-day zero-fare program offers several benefits during this critical transition period:

1. **Operational Focus**: Allowing a zero-fare period will enable staff to concentrate on operational and administrative tasks without the added complexity of fare collection and management.

2. **Customer Relations**: A zero-fare period can help mitigate potential service disruptions, fostering goodwill and understanding among passengers during the transition.

3. **Ridership Analysis**: This period will provide an opportunity to collect data on ridership patterns without fare barriers, offering valuable insights for future service planning and improvements.

4. **Public Awareness**: Launching a zero-fare program can serve as a public relations tool to inform residents about the changes in public transportation services and encourage usage.

5. **Access to Vital Services**: A zero-fare transit system improves residents' access to vital community services, including food, medical appointments, and employment opportunities, thereby enhancing the overall quality of life for our residents.

6. **Cost Efficiency**: Eliminating fare collection can reduce costs related to fare

management, including investment in technological hardware, staffing resources, and longer dwell time.

The financial impact of the proposed 90-day zero-fare program is estimated to be \$100,000, based on current fare revenue data. The loss in revenue will be supplemented by Local Transportation Funds (LTF), ensuring that the program does not negatively impact the overall budget for public transportation services.

Implementing a zero-fare program for 90 days during the transition of public transportation services administration is a strategic approach to support staff, ensure operational efficiency, and maintain positive customer relations. Additionally, it will improve residents' access to vital community services, thereby enhancing their quality of life.

RECOMMENDATION: That the City Council:

1. Approve the 90-day zero-fare program for fixed route and ADA paratransit services, effective July 1, 2024, and ending September 29, 2024;
2. Authorize staff to make necessary adjustments and communicate the program details to the public; and
3. Direct staff to monitor the program's impact and provide a report to the City Council upon completion of the 90-day period.

ATTACHMENTS:

1. Public Communication Plan_90-Day Zero-Fare Program
2. Ridership Data Collection Plan_90-Day Zero-Fare Program

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – SEPTEMBER 17, 2024

SUBJECT: Request for Authorization to Extend the Zero-Fare Program for Public Transportation Services

SOURCE: Public Works

COMMENT: On June 18, 2024, the City Council approved a 90-day zero-fare program for fixed-route and ADA paratransit services, set to conclude on September 29, 2024. This initiative was introduced as part of the City of Porterville's transition to directly managing its public transportation services.

During the first two months of the program, ridership increased significantly. Compared to the same period in 2023, fixed-route services saw a 46% rise in ridership in July 2024, and a 50% increase in August 2024, with a total of 57,597 riders across both months. ADA paratransit services also experienced a 31% growth in July 2024, and a 17% rise in August 2024, totaling 808 riders for both months. Additionally, staff is seeing similar positive trends for the first week of September 2024. These figures demonstrate the program's success in promoting public transportation and improving access to essential services for the community.

As the initial zero-fare period nears its end, staff recommends extending the program for an additional 90 days, from September 30, 2024, to December 31, 2024. This extension will provide continued support for operational, logistical, and administrative adjustments as the city transitions to full oversight of transit services.

Staff is actively collaborating with the Tulare County Association of Governments (TCAG) to develop a regional fare collection system. This effort includes seeking grant funding to support the future system's implementation. Extending the zero-fare program will allow time to complete this planning process and ensure a smooth transition to fare collection once the new system is ready.

The estimated cost of extending the zero-fare program is approximately \$100,000, based on current fare revenue data. This shortfall will be covered by Local Transportation Funds (LTF), ensuring no negative impact on the overall transportation budget.

RECOMMENDATION: That the City Council:

1. Approve the extension of the Zero-Fare Program for an additional 90 days, effective September 30, 2024, and ending

December 31, 2024;

2. Authorize staff to make necessary adjustments and communicate the program extension details to the public; and
3. Direct staff to monitor the program's ongoing impact and provide an updated report to the City Council at the end of the extended period.

ATTACHMENTS: 1. June 18, 2024 Staff Report

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Reauthorization of Professional Services Agreement with Clean Energy for Compressed Natural Gas (CNG) Fueling Station Maintenance Services with FTA Terms and Conditions

SOURCE: Public Works

COMMENT: On October 15, 2024, the City Council awarded a professional services agreement to Clean Energy to maintain the City's Compressed Natural Gas (CNG) fueling station. This station supports City operations and contributes to the City's sustainable transportation initiatives.

Upon review of the agreement, it was discovered that the approved draft inadvertently omitted the required terms and conditions for projects funded by the Federal Transit Administration (FTA). To ensure compliance with federal requirements, staff has updated the agreement to include these terms, as specified in Appendix 4, which details requirements for federal projects. These include provisions on program fraud, civil rights, record retention, federal termination rights, and access to records.

Clean Energy has extensive experience in CNG maintenance services, especially with federally funded projects. The updated agreement includes the same financial terms and scope of services previously approved by Council, as follows:

- Monthly fee for site inspections: \$1,520
- Monthly fee for 24/7 remote monitoring services: \$725
- One-time installation fee for remote monitoring system: \$10,370
- Hourly rates for time and material services: \$160/hour (standard) and \$240/hour (after hours)

The total estimated five-year cost remains \$145,070, with 80% funded by the FTA and 20% by Local Transportation Funds (LTF).

RECOMMENDATION: That the City Council:
1. Approve the revised professional services agreement with Clean Energy for the maintenance of the City's CNG

fueling station, incorporating all required FTA terms and conditions; and

2. Authorize the Mayor, or designee, to execute the revised agreement and any related documents on behalf of the City of Porterville.

ATTACHMENTS:

1. October 15, 2024 Staff Report
2. Revised Draft Agreement
3. Appendix 2 - RFP# 24-25-SR1982 - CNG Fueling Station Maintenance
4. Appendix 3 - Clean Energy's Proposal
5. Appendix 4 - FTA Terms and Conditions

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – OCTOBER 15, 2024

SUBJECT: Award of Professional Services Agreement to Clean Energy for Compressed Natural Gas (CNG) Fueling Station Maintenance Services

SOURCE: Public Works

COMMENT: The City of Porterville operates a Compressed Natural Gas (CNG) fueling station to support the City's fleet of vehicles, which includes transit and public works vehicles. This station plays a critical role in supporting the City's sustainable transportation initiatives. Regular maintenance of the CNG fueling infrastructure is essential to ensure continuous operations, safety, and compliance with environmental regulations.

In response to the need for ongoing maintenance, the City issued Request for Proposals (RFP) No. 24/25-SR1982 on August 20, 2024, to seek qualified service providers to manage routine inspections, preventive maintenance, emergency repairs, and parts replacement for the CNG fueling station.

The City received the following proposals, which were evaluated on a range of criteria, including understanding of the scope of work, technical approach, experience, key personnel, and cost.

Vendor	Score
Clean Energy	94
Trillium	93

Clean Energy has been in operation since 1996 and maintains over 100 CNG fueling stations for various public agencies. The firm's extensive experience, particularly with federally funded transit projects, made it the most qualified vendor. Key advantages of Clean Energy's proposal include its local presence, 24/7 customer support, quick access to spare parts, and a well-equipped team of technicians. Clean Energy's monthly cost includes \$1,520 for site inspections and \$725 for 24/7 remote monitoring. A one-time installation fee of \$10,370 for its proprietary remote monitoring system is also included.

Trillium USA submitted a competitive proposal but offered a higher monthly fee of \$4,500 for maintenance services. While their technical approach was solid, the cost difference between the two proposals was a key consideration. The overall points awarded to Clean Energy totaled 94 out of 100, slightly surpassing Trillium USA's 93 points.

The five-year contract with Clean Energy includes the following costs:

- Monthly fee for site inspections: \$1,520
- Monthly fee for 24/7 remote monitoring services: \$725
- One-time installation fee for remote monitoring system: \$10,370
- Hourly rates for time and material services: \$160/hour (standard) and \$240/hour (after hours)

Total estimated five-year cost: \$145,070.

The CNG Facility Maintenance Agreement between the City of Porterville and Clean Energy would be effective upon execution by both parties for a initial term of five (5) years. The agreement may be extended under the same terms and conditions for up to five (5) additional one (1) year terms, upon the mutual written consent of both parties. Funding for this project has been appropriated in the Transportation Department budget. Of this total, 80% is funded by the Federal Transit Administration (FTA) and 20% by Transit Local Transportation Funds (LTF).

RECOMMENDATION: That the City Council:

1. Approve the draft professional services agreement with Clean Energy for the maintenance of the City's CNG fueling station at an estimated monthly cost of \$2,245 and a one-time fee of \$10,370 for remote monitor software and equipment; and
2. Authorize the Mayor, or designee, to execute the agreement and any related documents on behalf of the City of Porterville.

ATTACHMENTS:

1. Draft Agreement
2. Clean Energy Proposal
3. Clean Energy Price Proposal
4. Porterville RFP # 24-25-SR1982_Plan Holders
5. Porterville RFP # 24-25-SR1982_Scoring Matrix

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CNG FACILITY MAINTENANCE AGREEMENT

This CNG Facility Maintenance Agreement (this “Agreement”) is dated as of the ____ day of _____, 2024 (the “Effective Date”) by and between City of Porterville, a charter city and municipal corporation (“City”), and Clean Energy, a California corporation (“Clean Energy”). The City and Clean Energy may be referred to herein as a “Party” individually and the “Parties” collectively.

RECITALS

WHEREAS, on August 20, 2024, the City issued a Request for Proposals No. 24/25-SR1982 for Compressed Natural Gas (CNG) Fuel Station Maintenance Services (the “RFP”) as described in Appendix 2;

WHEREAS, on September 3, 2024, the City provided certain responses to questions submitted during the RFP process, as described in Appendix 3;

WHEREAS, on September 24, 2024, Clean Energy submitted its proposal outlining its services, qualifications and technical capabilities for maintaining CNG fueling stations as described in Appendix 4;

WHEREAS, the City owns a compressed natural gas (“CNG”) station located at 555 N. Prospect Street, Porterville, CA 93257 (the “Facility”) on property owned by the City (the “Property”);

WHEREAS, the Facility includes the equipment listed on Appendix 1 attached hereto (the “Equipment”);

WHEREAS, the City desires for Clean Energy to provide Services (hereinafter defined) at the Facility on the City’s behalf, upon the terms set forth herein.

NOW THEREFORE, in consideration of the respective covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Term of Agreement.** The initial term of this Agreement shall commence on the Effective Date and end on the 5-year anniversary of the Effective Date. Upon the mutual written consent of both Clean Energy and the City, this Agreement may be extended under the same terms and conditions for up to five (5) additional one (1) year terms. The initial term and any renewal terms are referred to herein as the “Term.”

2. **License for Access to Facility.** The City hereby grants to Clean Energy during the Term, a license for ingress, egress, and general access to the Facility and the Property to the extent necessary for Clean Energy to provide the Services (as defined below).

3. **Maintenance of Facility**

(a) **Clean Energy’s Responsibilities.** The City hereby engages Clean Energy as the exclusive service provider to maintain the Facility as described in Exhibit A, attached hereto, and to perform certain other services relating to the Facility, as described in Exhibit B, attached hereto, (collectively, the “Services”), all on the terms and conditions and as more fully described in this

Agreement. Clean Energy hereby accepts such engagement and agrees to perform the Services in accordance with the terms and conditions of this Agreement.

(b) **Fees.** As consideration for providing the Services under this Agreement, the City shall pay Clean Energy the amounts set forth in Exhibit B attached hereto.

(c) **Service Guidelines.** Clean Energy shall provide the Services in material compliance with any and all Applicable Laws. For purposes of this Agreement, “Applicable Law” shall mean (a) all applicable federal, state, and local statutes, laws, requirements, decrees, ordinances, and codes, of all governmental authorities, including any federal, state, and local governments or any departments, bureaus, or agencies thereof having jurisdiction over the Property or the Facility; and (b) all other applicable rules, regulations, interpretations, and orders of any commissions, boards, agencies, or other legislative, executive, judicial, or other governmental or quasi-governmental bodies or officers having jurisdiction to regulate or supervise the Property or the Facility.

(d) **Training of Personnel.** Clean Energy shall be responsible for the selection and training of all Clean Energy employees or contractors that perform Services pursuant to this Agreement. All personnel employed or controlled by Clean Energy shall be appropriately trained and shall comply with all applicable safety processes and procedures standard for the maintenance of a CNG facility.

(e) **Permits and Approvals.** The City shall, at the City’s cost, be responsible for obtaining and maintaining any licenses, permits, or approvals required to operate and maintain the Property and the Facility, except for any such licenses, permits or approvals that Clean Energy is legally required to obtain in its name in connection with its provision of the Services.

(f) **Property Conditions.** If, at any time during the Term, it is determined that underground hazards, soil contaminants and/or soil conditions exist (including, without limitation, migratory pollution or other migratory conditions) that were not brought to the Property by Clean Energy and that either (a) require removal, replacement, and disposal of soils or materials, (b) require remediation, or (c) require unanticipated soil or foundation preparation work, Clean Energy shall not be financially and/or legally responsible for such underground hazards, soil contaminants and/or soil conditions and any required remediation, removal, replacement preparation work, and/or disposal. If the City does not commence, within ten (10) days after discovery of any such underground hazard or soil contaminant or soil condition, and thereafter diligently prosecute to completion the correction of such condition, Clean Energy may, without further obligation or penalty, terminate this Agreement by written notice to the City, and the City shall pay Clean Energy all amounts which accrued up to the date of the termination and reimburse Clean Energy for any and all reasonable costs related to the repair and maintenance of the Facility, paid or irrevocably committed to by Clean Energy prior to the date of the termination. This Section shall survive the termination of this Agreement.

4. **The City’s Obligations and Responsibilities.**

(a) **Facility Expansion.** The City will be responsible for any expenses or costs that may be required to expand the capacity or functionality of the Facility and the City will be responsible for any expenses resulting from a Force Majeure event (as defined below), provided such repairs are not required as a result of Clean Energy’s negligence.

(b) **Utilities and Fuel.** The City will be responsible for the provision and payment of any and all utility service charges for utility service consumed at the Facility during the Term (including, without limitation, gas, electricity, water, waste disposal, refuse collection, phone, internet access and other utility-type services furnished to Clean Energy or the Facility). Notwithstanding anything to the contrary and for the avoidance of doubt, Clean Energy makes no representation or warranty regarding the quality, specification or content of natural gas dispensed from the Facility.

(c) **Maintenance of Property.** The City shall be responsible for and shall at its own expense maintain the surrounding Property in the vicinity of the Facility.

(d) **Payment of Clean Energy Billings.** The City shall pay each invoice submitted by Clean Energy within thirty (30) days following receipt of the invoice by the City. For purposes of this Section, receipt shall be defined as the day the invoice is transmitted by Clean Energy. Any payments not made when due shall accrue interest on the unpaid amount at a rate of 10% per annum, calculated from the date payment is due to and including the date payment is received by Clean Energy. **IF PERMITTED BY LAW, CLEAN ENERGY SHALL PASS THROUGH TO THE CITY ANY SURCHARGES INCURRED BY CLEAN ENERGY RELATED TO THE CITY'S PAYMENT OF ITS INVOICES THROUGH USE OF A CREDIT CARD.**

In the event that the City fails to make payments in a timely manner or fails to meet Clean Energy's continuing credit approval, Clean Energy may suspend any and all services provided under this Agreement, until such time as the City brings payments current and meets Clean Energy's continuing credit approval.

(e) **Taxes.** The City shall be responsible for any taxes (including, without limitation, any real property taxes and assessments) relating to the Property and taxes that are determined by reference to the selling price of the services or parts provided under this Agreement unless the City has provided a valid exemption certificate prior to the rendering of such services or delivery of the parts.

(f) **Compliance with Law.** In performing its obligations under this Agreement, the City shall comply in all material respects with all Applicable Laws.

(g) **Materials.** In the event that the City has required Clean Energy to store materials on the Property for the Facility, upon the expiration or termination of the Agreement, the City shall purchase all materials stored on the Property by Clean Energy at such time at a mutually agreeable price no less than documented Clean Energy purchase price.

5. Termination.

(a) **For Convenience.** The City may terminate this Agreement, in whole or in part, at any time for its convenience and without cause by providing Clean Energy with thirty (30) days' written notice. In the event of such termination, the City shall be liable only for payment for services satisfactorily rendered and expenses incurred up to the effective date of termination. Clean Energy shall not be entitled to any other form of compensation, including for anticipated profits or unperformed services.

(b) **For Default or Breach.** Either Party may terminate this Agreement for default if the other Party: (a) becomes insolvent; (b) files any proceeding in bankruptcy, or acquires bankruptcy status;

(c) has a receiver or receiver manager appointed with respect to it or any of its assets; or (d) seeks the benefit of any statute providing protection from creditors. Either Party may also terminate this Agreement for breach if the other Party materially breaches any provision of this Agreement provided: (i) the non-breaching Party provides the breaching Party with written notice of breach and a thirty (30) day period within which to cure such breach ("Cure Period"); and (ii) the breaching Party fails to cure each such breach within the Cure Period provided, however, that where it is not commercially reasonable to fully effect a cure to the other Party within the thirty (30) day period set forth above, the Party in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such thirty (30) day period and thereafter proceeds diligently to cure the breach to the reasonable satisfaction of the non-breaching Party. Any termination of this Agreement shall be without prejudice to each right and/or remedy which the non-breaching Party may possess against the breaching Party under this Agreement, at law, in equity, and/or otherwise. In the event of termination, the City shall pay Clean Energy all amounts which accrued up to the date of the termination and reimburse Clean Energy for any and all reasonable costs related to the repair and maintenance of the Facility, paid or irrevocably committed to by Clean Energy prior to the date of the termination. The preceding sentence shall survive termination of this Agreement.

6. **Ownership of Facility and Improvements.** As between Clean Energy and the City, all right, title, and interest in and to the Facility and any improvements made to the Facility shall at all relevant times remain with the City. The City retains all rights in and to the Facility and any improvements thereon.

7. **Warranty.**

With respect to services performed by Clean Energy pursuant to this Agreement, for a period of one (1) month from the date of performance of such services (the "Warranty Period"), Clean Energy warrants to the City that the services shall be free from defects in workmanship (the "Warranty").

If the City gives Clean Energy prompt written notice of breach of this Warranty during the Warranty Period, Clean Energy shall, at its sole option and as the City's sole remedy, either re-perform the service (the City to provide Clean Energy with unencumbered access to the Property and equipment) or refund the purchase price therefore. The City shall bear the costs of access for Clean Energy's remedial Warranty efforts (including removal and replacement of systems, structures or other parts of the City's facility), de-installation, re-installation and transportation of the parts to Clean Energy and back to the City. If Clean Energy determines that any claimed breach is not, in fact, covered by this Warranty, the City shall pay Clean Energy its then customary charges for any re-performance completed by Clean Energy, or, in the event Clean Energy refunded the City the purchase price, the City shall return the purchase price to Clean Energy. Clean Energy's warranty is conditioned on the City's (a) operating and maintaining the applicable work in accordance with Clean Energy's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Clean Energy. Clean Energy's warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Clean Energy). Warranty repair or replacement shall not extend or renew the applicable Warranty Period.

With respect to equipment, part(s) or material(s) provided by Clean Energy to the City pursuant to this Agreement, Clean Energy hereby assigns to the City, to the extent assignable, any warranties made to Clean Energy by the applicable manufacturer or supplier, and Clean Energy shall have no

other liability to the City related to the supplied equipment, part or material under warranty, tort or any other legal theory.

THE WARRANTIES SET FORTH IN THIS SECTION ARE CLEAN ENERGY'S SOLE AND EXCLUSIVE WARRANTIES. CLEAN ENERGY MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT.

8. Indemnification.

(a) Clean Energy hereby agrees to indemnify, hold harmless and defend the City, and its officers, directors, employees and agents (collectively, the "City Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the City Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) Clean Energy's material breach of any representations, covenants or warranties of Clean Energy set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of Clean Energy, its employees, officers, owners, directors or agents in the performance of this Agreement; or (c) the material violation of any law, ordinance or regulation by Clean Energy. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the City Indemnitees.

(b) The City hereby agrees to indemnify, hold harmless and defend Clean Energy, and its officers, directors, employees and agents (collectively, the "Clean Energy Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the Clean Energy Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with: (a) the City's material breach of any representations, covenants or warranties of the City set forth in this Agreement; (b) any negligent actions or omissions or willful or reckless misconduct of the City, its employees, officers, owners, directors or agents in the performance of this Agreement; (c) the material violation of any law, ordinance or regulation by the City; or (d) any pre-existing or migratory environmental condition or hazard. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful or reckless misconduct of the Clean Energy Indemnitees.

9. Insurance Requirements.

The City and Clean Energy shall each procure at their respective expense, and maintain in full force and effect during the Term of this Agreement, including any renewals, with insurance carriers rated at least A- VII or Better in A.M. Best's Insurance Report and admitted to do business in the state where the Facility is located, the following primary insurance in at least the minimum amounts specified, with the other respective Party named in the commercial general liability policy (or excess liability or umbrella liability policy, if applicable) and the automotive liability policy as an additional insured and including a transfer of rights or waiver of subrogation endorsement. Such

insurance, excluding workers compensation, shall be endorsed to require at least thirty (30) days' written notice to the other respective Party of cancellation.

(a) Commercial General Liability Insurance, including coverage at least as broad as the latest version of the Insurance Service Office Commercial General Liability coverage (occurrence form CG001) to a combined single limit of not less than \$15,000,000. Excess liability or umbrella liability coverage may be used to evidence or provide limits in addition to primary limits of no less than \$1,000,000 on the commercial general liability policy.

(b) Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of \$1,000,000.

(c) Workers Compensation and Employers Liability

(i) Workers compensation in compliance with applicable state and federal laws.

(ii) Employers liability with a limit of not less than \$1,000,000.

The requirements for carrying the foregoing insurance shall not derogate from the provisions of indemnification as set forth in this Agreement. If a Party maintains higher limits than the minimums shown above, the other Party requires and shall be entitled to coverage for the higher limits maintained.

The City shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Attn: Barbara Johnson
Fax: (949) 724-1568
Email: bjohnson@cleanenergyfuels.com

Clean Energy shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

City of Porterville
555 N. Prospect St
Porterville, CA 93257
Attn: Richard Tree
Email: rtree@ci.porterville.ca.us

10. Assignment. Neither Party shall have the right to assign its rights or obligations hereunder, in whole or in part, without obtaining the prior written consent of the other Party and any attempted assignment without such prior written consent shall be void. Permitted assigns shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

11. **Liens.** The City represents that it is the owner of the Property and has full authority to enter into this Agreement. So long as the City is not in breach of any term of this Agreement and has timely paid all of Clean Energy's invoices, then Clean Energy shall make timely payment to all contractors performing work on behalf of Clean Energy and shall, at its expense, cause any lien filed by any contractor performing work on behalf of Clean Energy to be canceled or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise within thirty (30) days after Clean Energy receives actual notice of the filing of such lien, charge, or order for the payment of money.

12. **Relationship of Parties.** Clean Energy and the agents and employees of Clean Energy in the performance of this Agreement shall act in an independent capacity as independent contractors and not as officers or partners or employees or agents of the City.

13. **Governing Law.** This Agreement shall be subject to and construed in accordance with the laws of the State of California.

14. **Attorneys' Fees.** In the event of any litigation between the Parties concerning any provision of this Agreement or the rights and obligations of any party in relation thereto, the prevailing Party shall be entitled to an award for all costs incurred by reason of such litigation, including but not limited to reasonable attorneys' fees and fees and expenses of witnesses. The trier of fact shall designate the prevailing Party.

15. **Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by certified mail, return receipt requested, or overnight courier or facsimile to the other Party at such address as set forth below:

If delivered to City:

City of Porterville
Attn: Richard Tree
555 N. Prospect St
Porterville, CA 93257
Email: rtree@ci.porterville.ca.us

If delivered to Clean Energy:

Clean Energy
Attn: Chad Lindholm
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Fax: (949) 724-1397

With a copy to:
Clean Energy
Attn: Deputy General Counsel
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Fax: (949) 424-8285

Each Party shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other Party. Without limiting any other means by which a Party may be able to prove that a notice has been received by the other Party, a notice shall be deemed to be duly received:

- (a) if sent by hand, the date when left at the address of the recipient;
- (b) if sent by certified mail, the date of the return receipt;
- (c) if sent by overnight courier, the date when receipt is acknowledged at the address of the recipient; or
- (d) if sent by facsimile, the date of the confirmation.

16. Force Majeure. If either Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, interruptions in utility services, the cessation of providing necessary products or services to Clean Energy by any supplier to Clean Energy, labor disputes, catastrophic equipment failures due to extraordinary events beyond the control of Clean Energy, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from any payment obligations hereunder.

17. Limitation of Liability. Neither Party shall have any liability to the other Party for special, consequential, or incidental damages, except however in connection with a claim made against either Party by a third party, provided that such claim arises out of or results from the negligence or willful misconduct or any other claim within the scope of the indemnity obligations of Clean Energy or the City, as applicable, under this Agreement.

18. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties, and is not intended to create any benefits to any third parties.

19. Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

20. Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

21. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

22. Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

23. Representation regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

24. Incorporation of FTA Terms. The preceding provisions, as described in Appendix 5, include in part certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT) Federal Transit Administration (FTA), whether or not expressly set forth in this Agreement. All contractual provisions required by FTA are hereby incorporated by reference, and any conflicts between FTA requirements and other contract provisions shall be resolved in favor of FTA requirements. Clean Energy shall not perform any act or fail to perform any act that would cause the City to be in violation of FTA requirements.

25. Order of Precedence. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (i) Appendix 5 (FTA Terms and Conditions); (ii) the body of this Agreement, Exhibit A (Maintenance Inspections), Exhibit B (Fees), and Appendix 1 (Equipment); (iii) Appendix 4 (Clean Energy's Proposal); (iv) Appendix 3 (Q&A for the RFP); and (v) Appendix 2 (the RFP).

26. Miscellaneous. This Agreement, along with the exhibits and appendix attached hereto, constitutes the complete and exclusive agreement and understanding between the Parties and supersedes all prior communications and agreements, whether oral or written. The Parties expressly agree that there are no other agreements, understandings, restrictions, warranties, and/or representations by, between and among the Parties relating to the subject matter of this Agreement other than those expressly set forth herein or herein provided for. This Agreement may only be modified by an instrument that is executed by each Party's duly authorized representative. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which collectively constitute one (1) and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the Effective Date.

CITY OF PORTERVILLE

CLEAN ENERGY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

MAINTENANCE INSPECTIONS

1. The following is a sample checklist that provides an example of what is used by Clean Energy service technicians to perform certain monthly inspections at the Facility (the “Maintenance Inspections”). Clean Energy shall be entitled to deviate from and modify such checklist as appropriate in Clean Energy’s reasonable judgement.

Routine Maintenance Inspection Checklist
Compressor Service Tasks:
Check packing vents for blowing gas. Check low oil pressure shutdown 45psgi (3.1 bar) minimum. Inspect compressor hoses, tubing, piping, and valves for leaks. Check control gas regulator. Inspect pressure gauges for leaking glycerin. Check frame oil pressure. Check bolts, clamps, and nuts for tightness. Check intake/outlet air louver operation. Wipe down/clean compressor Check paint and/ or apply touch up as needed. Check and record frame oil level. Drain inter-stage scrubbers and record weight. Drain suction filter and record weight. Drain discharge filter and record weight. Drain recovery tank and record weight. Drain vent stack and record weight. If oil added record weight.
Priority Panel Service Tasks:
Check for leaks in valves, gauges and transmitters. Check for corrosion.
Gas Dryer/Storage Service Tasks:
Check dew point, Typical operation range between -70 to -110. Run micro-climate tests. Record fluid level from vessels. Inspect vessels for fluid and drain if needed. Record amount drained from vessels.
Dispenser/Fill Post:

Check hoses and breakaways for leakage, soft spots, or bulges, excessive abrasions, cuts, or cracks that exposes or damages reinforcement, kinked or twisted hose, 3-way valve leaks, nozzle or valve damage, Clean and inspect fueling nozzles.
Check dispenser filter for oil.
Note any issues not described above.

For the avoidance of any doubt, the following are not included in the Maintenance Inspections or the Maintenance Inspections Fee and will be billed separately by Clean Energy, as identified in Exhibit B:

- Call Outs, as described in Exhibit B;
- All replacement wear and tear parts and consumables (i.e. oil, filters, etc.); and
- Any required certifications and/or calibrations.

2. In the performance of all Services, Clean Energy will:

- Follow the maintenance schedules as identified in Exhibit A, as may be amended from time to time.
- Utilize only fully qualified and trained technicians. Tech will wear all required personal protective equipment and check-in and check-out with the shop superintendent.
- Provide all required standard and specialty tools.
- Utilize only original OEM parts.
- Inspect, record and provide to the City a report of the overall condition of the equipment and operations as well as record all maintenance, service and repair work.
- Pass through to the City all manufacturers' warranties related to third party equipment.
- Maintain records confirming that Clean Energy has completed all of the required tasks specified in the table above (as may be amended from time to time), and such records shall be provided upon request by the City.

As part of the Services, Clean Energy will test the garage methane sensors, which assumes no lift is required to access the methane system controls. Any repair work to the garage equipment will be the responsibility of the City or another contractor hired directly by the City.

At a reasonable frequency determined by Clean Energy, Clean Energy will inspect any fire extinguishers at the Facility and will notify the City if Clean Energy notices any have expired, but Clean Energy will not be responsible for re-certifying the fire extinguishers, as that will be City's responsibility.

EXHIBIT B

FEES

Maintenance Inspections Fee

On a monthly basis, during the Term, the City shall pay Clean Energy the following amount for its performance of the Maintenance Inspections:

Description	Rate (per month)
The “Maintenance Inspections Fee”	\$1,520.00 + applicable fees, assessments and taxes (including, without limitation, taxes which are measured based on the selling price) per month*
24/7 Remote Monitoring	\$725.00 + applicable fees, assessments and taxes (including, without limitation, taxes which are measured based on the selling price) per month*

One Time Proficy Set Up Fee:

To provide the remote monitoring services described below, Clean Energy shall install, at the Facility, its proficy remote monitor software and/or equipment (“Proficy”) and the City shall pay Clean Energy the following amount for such installation:

Description	Rate	Frequency
Proficy Installation	\$10,370.00	One time

The Parties agree, notwithstanding anything to the contrary in this Agreement, that all remote monitoring software and/or equipment installed by Clean Energy at the Facility is owned by Clean Energy and title to such installed software and equipment shall remain with Clean Energy during the Term. Further, the Parties agree, notwithstanding anything to the contrary in this Agreement, that upon the expiration or termination of this Agreement, Clean Energy shall remove and/or delete all installed remote monitoring software and equipment (as applicable).

Call Out Rates

In the event the City desires to have Clean Energy go to the Facility to perform services other than the Maintenance Inspections, the City may call Clean Energy’s Operations Center to schedule a “Call Out”.

For each Call Out, the City shall be billed for such service at the applicable hourly rate described below multiplied by the number of hours the Clean Energy technician(s) expended traveling to and from the Facility and at the Facility; however, in the event Clean Energy’s cumulative time traveling to, and from, the Facility and onsite at the Facility is less than 3 hours, the City will be billed as if Clean Energy had been at the Facility for 3 hours. The City will be billed for any equipment, parts and/or materials that Clean Energy supplies for the performance of the Call Out services at the rate described below.

Description	Rate
Labor Rates Monday – Friday 8:00 a.m. to 5:00 p.m.	\$160.00 per hour, plus all taxes which are measured or determined based on the selling price*
Labor Rates Monday – Friday 5:01 p.m. to 7:59 a.m. and all weekends & holidays	\$240.00 per hour, plus all taxes which are measured or determined based on the selling price*
Equipment & Parts & Materials	Clean Energy list price minus 10%, plus all taxes which are measured or determined based on the selling price

*Beginning January 1, 2026, and on each January 1 thereafter during the Term of this Agreement, including any renewals, the Maintenance Inspections Fee and Labor Rates shall be adjusted by the increase in the United States Bureau of Labor Statistics Consumer Price Index, All Items in the U.S. City Average, All Urban Consumers, Seasonally Adjusted, from the Effective date of this Agreement for the first such adjustment, or the date of the last adjustment for each subsequent adjustment, through the date of the current adjustment.

APPENDIX 1

EQUIPMENT

STATION EQUIPMENT

Equipment Description	QTY
ANGI Compressor	2
Gas Dryer	1
Storage Vessels	3
Fast Fill Dispenser	2
Time Fill Hoses	52
Priority/Buffer Control Valve Panel	1
CNG Station Control System	1
Switchgear Compressor Motor Starters	2
Master Control Panel	2

GARAGE EQUIPMENT

Equipment Description	QTY
Methane Detection Control Panel	1
Exhaust Fans	4
Intake Louvers	4
Methane Sensors	4

APPENDIX 2

RFP

APPENDIX 3

Q&A FOR THE RFP

APPENDIX 4

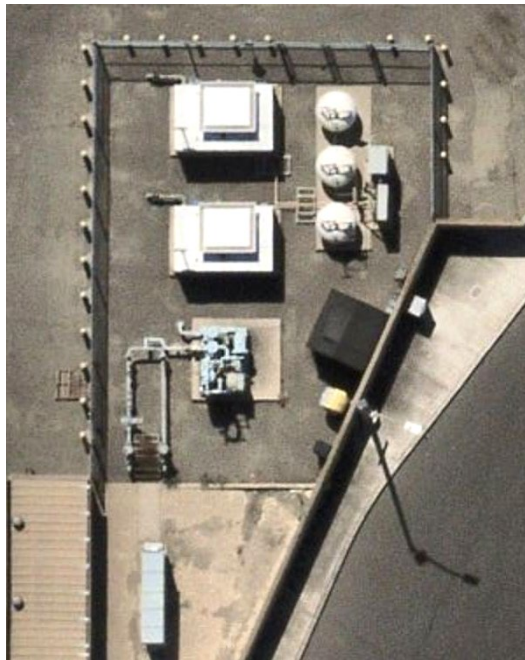
CLEAN ENERGY'S PROPOSAL

APPENDIX 5

FTA TERMS AND CONDITIONS



**CITY OF PORTERVILLE
REQUEST FOR PROPOSAL RFP No. 24/25-SR1982
COMPRESSED NATURAL GAS (CNG)
FUELING STATION MAINTENANCE SERVICES**



August 20, 2024

The City of Porterville does not discriminate on the basis of race, gender, ethnicity, age, national origin, religion or disability in its employment opportunities, programs, services, contracting opportunities or activities. It is the City's policy to ensure compliance with the Title VI of the Civil Rights Act of 1964 in its contracting opportunities.

The project is funded in part by the Federal Transit Administration Catalog of Federal Domestic Assistance (CFDA) 20.500 and 20.507. The City of Porterville reserves the right to reject any or all proposals.



**CITY OF PORTERVILLE, CALIFORNIA
REQUEST FOR PROPOSALS (RFP) NO. 24/25-SR1982
COMPRESSED NATURAL GAS (CNG) FUELING STATION MAINTENANCE SERVICES**

SEALED PROPOSALS will be received by the Transportation Department located at 291 N. Main Street, Porterville, CA 93257, until 2:00 P.M. on Tuesday, September 24, 2024, for the Contract to provide Compressed Natural Gas (CNG) Fueling Station Maintenance Services.

A mandatory site visit is **REQUIRED** in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us. The site visit will be concluded on September 21, 2024, at 10:00 am.

This contract is federally funded and as such, the Federal Requirements associated with the performance of services under this contract have been included with this RFP. The awarded Proposer will be responsible for adherence to all local, state, and federal requirements listed herein. These requirements are hereby incorporated into the subsequent contract arising from this RFP.

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. All addenda and correspondence during the process will be handled electronically through the Public Purchase website.

The City has not established a DBE goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract. The City of Porterville overall DBE goal is 1% of total contracts (including subcontracts) awarded.

The City hereby affirmatively ensures that Minority Business Enterprises and Disadvantaged Business Enterprises (DBE) will be afforded the full opportunity to submit proposals in response to this notice. Individuals and/or entities submitting bids/proposals to the City of Porterville will not be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, gender, gender identity or expression, age, sexual orientation, or military or veteran status in any consideration leading to the award of contract.

The right is reserved by the City of Porterville to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Publication Dates:

August 20, 2024

Table of Contents

Section I - Instructions	4
Section II – Standard Terms and Conditions	14
Section III – Special Terms and Conditions	25
Section IV – Insurance and Indemnification	34
Section V - SCOPE OF WORK	38
Section VI – Federal Transit Administration (FTA) Terms and Conditions	43
Exhibit A – Required Forms	68
Exhibit B – Sample General Services Agreement	75

Section I - Instructions

RFP/Agreement Schedule

Event	Date of Event
RFP Available to the public	August 20, 2024
Required Site Tour	Pre-Scheduled
Deadline to submit questions	September 10, 2024
Proposal submittal deadline @ 2:00 pm PST	September 24, 2024
Short list established and vendors notified	October 3, 2024
Interviews/Presentation with short-listed vendors (if required)	October 9, 2024
Award of Contract @ City Council Meeting	October 15, 2024
Contract Begins	November 1, 2024

City's Vendor Self-Registration and Notification

Proposal forms and documents may be inspected and electronically downloaded at no cost, at the Public Purchase website, www.publicpurchase.com. No copies of said documents will be provided by the City. No proposal shall be received from an individual or firm that has not accessed the proposal documents from the Public Purchase website. All addenda and correspondence during the process will be handled electronically through the Public Purchase website. Questions regarding this request for proposals must be submitted through the Public Purchase website.

Background

The City of Porterville ("CITY") is located in Tulare County, which is part of the Central San Joaquin Valley of California. The San Joaquin Valley is a rich agricultural area and Tulare County is recognized as the largest agricultural-producing county in the world.

Porterville has a land area of approximately 14.3 square miles (9,161 acres), situated at the base of the foothills of the Sierra Nevada Mountain Range. It is approximately 30 miles southeast of Visalia (the County seat); 60 miles northeast of Bakersfield, 165 miles northeast of Los Angeles, and 254 miles southeast of San Francisco. State Routes 65 and 190 bisect the community.

The Porterville City Council is the policy-making body for the City of Porterville's Transportation Department. It adopts the Short-Range Transit Plan, and through the annual budgetary process, establishes operational and funding levels for the system. The City Council also sets operational policies and parameters.

Management of the City's public transportation system, referred to as Porterville Transit, is an integrated function of the City of Porterville. The Transportation department is responsible for the overall management of the service. The City is also responsible for the maintenance of the transit fleet, through its Field Services Division.

The City outsources, to a private contractor, to perform daily operations of Porterville Transit. The Director of Transportation is responsible for the overall administration, planning, monitoring, and

marketing of the system. The Director of Transportation also acts as a liaison to the Tulare County Association of Governments (TCAG), the California Department of Transportation (Caltrans) and the Federal Transit Administration (FTA). The contracted local General Manager is responsible for the day-to-day operations management; the hiring, testing, training and supervision of all drivers and dispatch staff; fare collection; reporting; ridership data collection; and the operation of Porterville Transit vehicles in accordance with City policy and all State and Federal regulations. The County of Tulare contracts with the City of Porterville to provide transit service to unincorporated areas surrounding Porterville. The County reimburses the City for service provided to County residents using Local Transportation Funds (LTF).

Porterville Transit provides an array of transportation services in the form of fixed route bus services, ADA complementary paratransit, and innovative On-Demand services.

Preparation of Offer

1. Any person (“Proposer”) submitting a Proposal (“Proposal”) in response to this Request for Proposals (“RFP”) shall examine the Scope of Work carefully and be informed thoroughly regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract to be awarded under this RFP (the “Contract”). No allowances shall be made because of lack of knowledge of any specifications, conditions, or requirements of this RFP.
2. All forms provided must be completed and submitted with your Proposal.
3. It is permissible to copy submittal forms if necessary. Erasures, interlineations, or other modifications of the Proposal must be initialed in original ink by the authorized person signing the offer. No Proposal will be altered, amended, or withdrawn after the specified offer due date and time. The City is not responsible for Proposer’s errors or omissions.
4. All time periods stated as a number of days will be calendar days.
5. It is the responsibility of all Proposers to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after due date and time. Proposers are strongly encouraged to:
 - 1) Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
 - 2) Study and carefully correlate Proposer’s knowledge and observations with the RFP document and other related data.

- 3) Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which a proposer has discovered in or between the RFP document and such other related documents.
- 4) The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Proposer is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- 5) Proposers are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Proposals offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 6) Proposers' responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products proposed. Proposals submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 7) Prices shall be submitted on a per unit basis by line item, when applicable. Failure to submit any unit pricing will be sufficient grounds for the City to consider the proposal to be non-responsive. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

Exceptions

Proposer must not take any exceptions to any terms, conditions or material requirements of this solicitation. Proposals submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Proposals must conform to all the requirements specified in the solicitation. The City encourages Proposers to send inquiries to the procurement officer rather than including exceptions in their Proposal.

Communications to City

All questions pertaining to this RFP, or any matters relating thereto the Scope of Work, or any questions pertaining to the RFP or RFP documents, shall be in writing and shall be submitted only through the Public Purchase website. Communications sent to any other person at the City or at any other address may, in the City's sole discretion, be deemed to be "non-responsive" and the

City in its discretion may elect to disregard any such questions. The City shall not respond to oral inquiries, and oral statements of any nature by the City or any of its representatives may not be relied upon for any purpose whatsoever.

Addenda

The City of Porterville will not be responsible for any oral instructions made by any employees or officers of the City of Porterville regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.

Business in California

The City will not enter contracts with Proposers (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of California, unless the proposer asserts a statutory exception prior to entering a contract with the City.

Licenses

If required by law for the operation of the business or work related to this Proposal, Proposer must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

Certification

By signing the Proposal, proposer certifies:

- The Proposer's submission of the Proposal did not involve collusion or other anti-competitive practices
- The Proposer shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Proposer has not given, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.

Minimum Qualifications

- Proposer must have been in operation a minimum of five years.

Certificates of Insurance

Upon notification of a recommended award, the Proposer will have 14 calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive and responsible Proposer whose proposal, in the sole and absolute discretion of City, for providing the goods and/or services contained in this solicitation, who have demonstrated the ability to perform in an acceptable manner, and is most advantageous to the City.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.

A response to a solicitation is a Proposal to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Proposals do not become contracts until they are executed by the Mayor. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual proposers or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under California Statutes, until the resulting contract(s) are awarded to all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Proposers may not discuss the solicitation with any City employees or evaluation panel members.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Porterville City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Proposals, the City Manager will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. PROPOSERS THAT

VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Proposer, regardless of whether the City responds to the contact. Proposers that violate this policy will be disqualified until the resulting contract(s) are awarded, or all proposals or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

Protest Process

In the event any person wishes to file a Protest regarding this RFP, such Protest shall be made in accordance with City’s FTA Procurement and Contract Administration Manual (which is available at www.ci.porterville.ca.us), the terms of which are hereby included herein by this reference. The City reserves the right to modify the terms of the protest procedure if it determines that such modification is in its best interest. Should there be any dispute between the City’s FTA Procurement and Contract Administration Manual and the provisions of this Section, the City in its discretion shall determine which provision governs.

By way of background, all Proposers understand and agree that the procurement process undertaken by virtue of this RFP is solely for the benefit of the City, and it is for the City to determine in its discretion which Proposal the City desires to accept. The City has provided for a Protest procedure not to grant any rights to any particular Proposer but, rather, to provide the City the opportunity to review and examine any information regarding any Proposal which it may not have fully evaluated. Thus, no Proposer has any legal right in connection with any Protest Proceeding and the City may, in its discretion, determine whether or not to reject any Protest.

In the event a Protest is rejected, the Proposer may appeal the rejection as set forth in the City’s FTA Procurement and Administration Manual or herein but, again, said appeal shall be decided by the City based upon what it determines to be in its best interest. As such, legal concepts (such as the California or Federal Rules of Civil Procedure and the Judicial Rules of Evidence) and other matters which may be applicable to judicial or other proceedings are not applicable to a Protest in accordance with the City’s FTA Procurement and Contract Administration Manual. In addition, the appeal process set forth in the City’s FTA Procurement and Contract Administration Manual is exclusive and upon the exhaustion of the appeal, no further appeal may be taken, or separate suit filed against the City.

By virtue of submitting its Proposal, any Protesting Party expressly agrees that its remedies are exclusively limited to the City’s Protest procedure set forth in the City’s FTA Procurement and Contract Administration Manual (as the same may be modified hereby) and that there shall be no appeal or litigation resulting from the final award of any Contract by the City. The foregoing is a material consideration in the consideration by the City of any Proposal.

Public Record

All Proposals submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to California State law. If a Proposer believes that a specific section of its Proposal response is confidential, the Proposer will isolate the pages marked confidential in a specific and clearly labeled section of its Proposal response. A Proposer may request specific information contained within its Proposal is treated by the Procurement Officer as confidential provided the Proposer clearly labels the information “confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Proposers as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Proposer in writing of any request to view any portion of its Proposal marked “confidential.” The Proposer will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Proposer does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

Right to Disqualify

The City reserves the right to disqualify any Proposer who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the Proposer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Proposer waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City of Porterville or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Proposer.

Late Proposals

Late Proposals must be rejected, except for good cause. If a late Proposal is submitted, the Department will document the date and time of the submittal of the late Proposal, keep the Proposal and notify the Proposer that its Proposal was disqualified for being late.

Pre-Bid Meeting

A mandatory site visit is REQUIRED in order to be familiar with the site and the work to be performed. To examine the site, please contact the Director of Transportation, Richard Tree at (559) 782-7514 or rtree@ci.porterville.ca.us.

Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award contracts.

Determining Responsiveness and Responsibility

Proposals will be reviewed for documentation of any required minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Proposals will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Proposals will render a Proposal nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a Proposal that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Proposer remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so in writing, the City may determine the Proposal to be nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by Contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Proposer be a responsible contractor. Responsibility includes the Proposer's integrity, compliance with public policy, skill, capacity, experience, record of past performance, financial and technical resources, and facilities for conducting the work to be performed.

The Procurement Officer will review each Proposal to determine if the Proposer is responsible. The City's determination as to whether an Proposer is responsible will be based on all information furnished by the Proposer, interviews (if any), any information at the City's request and information received from Proposer's references, including information about Proposer's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Proposer agrees to permit by submitting its Proposal, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Proposer's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Proposal.

Clarifications

The City may request written clarifications for such purposes as information gathering or eliminating minor irregularities in offers. Clarifications shall not otherwise afford the Offerors the opportunity to alter or change their offers.

Detailed Evaluation of Proposals and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Proposer's rankings and which Proposals are within the Competitive Range, when appropriate.

Proposals Not Within The Competitive Range

The City may notify Proposers of Proposals that the City determined are not in the Competitive Range.

Discussions With Proposers In The Competitive Range

The City will notify each Proposer whose Proposal is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Proposer. Each Proposer so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Proposal. The Proposers in the competitive range may be required to provide a demonstration of their product.

Demonstrations - Proposers in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Porterville. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If a Proposal in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Proposer to remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so, the City may determine the Proposal is nonresponsive, and the City may revoke its determination that the Proposer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Proposer about other Proposals received in response to this solicitation. During discussions with Proposers in the Competitive Range, the City will not give Proposers specific prices or specific financial requirements that Proposers must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace

or otherwise unacceptable. Proposers will not be told of their relative rankings before Contract award.

Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Proposer in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Proposal and make one BAFO.

If a Proposer's BAFO modifies its initial offer, the BAFO should include a "Change Log" identifying all modifications made to the Proposal. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Proposals. The City will adjust appropriately, at its sole discretion, the initial scores for criteria that have been affected by Proposal modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Proposal that is the most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to a Proposer whose Proposal is the highest rated and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

Section II – Standard Terms and Conditions

Contract Interpretation

Applicable Law

This Contract will be governed by the law of the State of California, and suits pertaining to this Contract will be brought only in Federal or State courts in Tulare County, State of California.

Contract Order Of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- Federal Terms and Conditions
- Special Terms and Conditions
- Standard Terms and Conditions
- Amendments
- Scope of Work
- Specifications
- Attachments
- Exhibits
- Instructions to Contractors
- Other documents referenced or included in the RFP

Organization – Employment Disclaimer

The Agreement resulting hereunder is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and will save and hold the City harmless with respect thereto.

Severability

The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

Non-Waiver of Liability

The City of Porterville as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable California law.

Parol Evidence

This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contract Administration and Operation

Records

All books, accounts, reports, files, and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Porterville office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

Discrimination Prohibited

Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The Contractor will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts.

Equal Employment Opportunity and Pay

For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts.

For a Contractor with more than 35 employees: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, 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 further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

Documentation: Contractors may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

Monitoring: The City shall monitor the employment policies and practices of Contractors subject to this article as deemed necessary. The City is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

Health, Environmental and Safety Requirements

The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
- A list of all federal, state, or local (EPA, OSHA, Tulare County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this Agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

Compliance With Laws

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent Contractor, the City assumes no responsibility for the Contractor's acts.

Continuation During Disputes

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by a California Court of competent jurisdiction.

Emergency Purchases

The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

Costs and Payments

General

Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Proposal.

Payment Deduction Offset Provision

Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

Late Submission of Claim By Contractor

The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

Discounts

Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

No Advance Payment

Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

Fund Appropriation Contingency

The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

Maximum Prices

The City will not be invoiced at prices higher than those stated in any contract resulting from this Proposal. Contractor certifies, by signing this Proposal that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Proposal and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

F.O.B Point

All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

Contract Changes

Contract Amendments

Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

Assignment – Delegation

No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

Non-Exclusive Contract

Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

Risk of Loss and Liability

Title and Risk of Loss

The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

Acceptance

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

Force Majeure

Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

Loss of Materials

The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

Contract Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

Damage to City Property

Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

Non-Exclusive Remedies

The rights and remedies of the City under this Contract are non-exclusive.

Default In One Installment To Constitute Breach

Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

On Time Delivery

Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.

Default

In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

Covenant Against Contingent Fees

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

Cost Justification

In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Proposal price is fair and reasonable.

Work Product, Equipment and Materials

All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

Contract Termination

Gratuities

The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

Conditions and Causes for Termination

This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Contractor will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

State and Local Sales and Use Taxes

In accordance with applicable state and local law, sales and use taxes may be applicable to this transaction. The state and local sales and use tax burden and legal liability to remit taxes are on the vendor that is conducting business in California and the City of Porterville. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or

application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. Once your proposal is submitted, the Proposal is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

Tax Indemnification

Contractor shall, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including sales and use taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

Tax Responsibility Qualifications

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of California for any License or Sales taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in California statutes relative to State Sales and Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the California State Department of Revenue to release tax information relative to California Sales and Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

Russia Sanctions

Executive Order N-6-22 – Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, which shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

Mitigation of Heat-Related Illnesses and Injuries in the Workplace

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to

prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

- Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.
- Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- Access to shaded areas and/or air conditioning.
- Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
- Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
- Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures, and how to report heat illness and injury to emergency medical personnel.

The Contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Contractor to ensure compliance by its subcontractors.

Section III – Special Terms and Conditions

Term of Contract and Option To Extend

The Contract shall commence on the date both the City and Contractor execute the Agreement (“Contract’s start date”), and end when the City Council accepts the project as completed (“Contract’s end date”).

Post Award Conference

A post award conference may be held by the City prior to commencement of any work. Contractor will be required to attend. The purpose of this conference would be to discuss critical elements of the work schedule, operational problems, the transition plan and procedures.

Estimated Quantities

Quantities listed are the City’s best estimate and do not obligate the City to order or accept more than City’s actual requirements during the period of this Contract, as determined by actual needs. It is expressly understood and agreed that the Contract is to supply the City with its complete actual requirement for the Contract period.

Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the City Council prior to the institution of the change

Alteration In Character Of Work

No changes in the scope, character, or complexity of work may be made by Contractor without first receiving approval by contract amendment properly defining and limiting the change. The City will not pay any claim for extra work done or materials furnished by Contractor except as provided in this Contract, and Contractor may not do any work or furnish any materials not covered by this Contract unless first approved by the City through contract amendment. Any such work or materials furnished by Contractor without prior contract amendment is Contractor’s sole risk, cost, and expense, and Contractor may not make any claim for compensation for any such work or materials.

Method Of Invoicing And Payment

The CITY will compensate Contractor for satisfactory and complete performance of work under the Contract at the prices set forth in the Contract, with no additional charges for equipment, supplies, overhead, travel or administrative support.

Contractor shall be paid monthly in arrears. On or before the 10th day of each calendar month, Contractor shall submit one (1) invoice to the City for services provided during the previous month and each invoice shall contain the date, contract number, supporting documentation, and invoice amount. Advance payments are not authorized. Payment may only be made for actual goods and/or services that have been received, less liquidated damages.

The invoice must contain the associated purchase order number on the invoice itself and must be free of mathematical errors and/or missing supporting documentation. Upon finding an error and/or missing documentation, the City will return the invoice to Contractor. Contractor shall promptly resubmit the revised invoice to the City. Failure to identify an error does not waive any of the City's rights. The City shall make every effort to process payment for the purchase of services within 45 calendar days after receipt and approval of a correct invoice.

Any prompt payment discounts offered must be clearly noted by Contractor on all invoices submitted to the City. Monthly invoice must be sent for review to the City's Project Manager. The City shall notify the Contractor if the invoice has been approved or if it requires additional documentation and/or correction.

Following invoice approval, Contractor will email the invoice in PDF format to ap@ci.porterville.ca.us, copying the City's Project Manager. Each PDF attachment will contain only one invoice, although multiple PDFs may accompany an email. The email will be in plain text format free of any signatures or images (jpeg, bmp, etc.).

A "remit to" address must also be on the invoice and must match the address on file with the City. Any changes to the remit to address must be updated by the vendor.

Key Personnel

Contractor shall maintain the Key Personnel identified in its proposal for a minimum of 24 months from the "Effective Date" of contract award by City Council unless they are no longer employed by Contractor. Contractor shall notify the City in writing prior to removing, reassigning, or appointing an individual from or to any Key Personnel position whether in an acting or permanent capacity. For all Key Personnel, Contractor shall fill vacancies with City approval within 45 calendar days of the vacancy, unless otherwise approved by the City in writing. All of Contractor's Key Personnel shall be assigned full-time (a minimum of 40 hours per week) to this project, unless otherwise approved in writing by the City. In the event one or more of Contractor's Key Personnel is permanently replaced, Contractor shall notify the City in writing at least 72 hours prior to the replacement date and time. The replacement personnel shall be subject to the City's prior approval in writing.

Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

Performance Interference

Contractor shall notify the City's Project Manager immediately of any occurrence and/or condition that threatens to interfere with the full performance of the contract and confirm it in writing within 24 hours.

Unsatisfactory Performance

Contractor will furnish all necessary labor, tools, equipment, permitting, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the Scope of Work, or elsewhere in this Contract. The City shall decide all questions as to the quality and acceptability of any work performed under the Contract as monitored and documented by the City. If, in the opinion of the City, performance becomes unsatisfactory, the City shall notify Contractor. Contractor shall have a reasonable time to cure the unsatisfactory performance.

If the unsatisfactory performance is not cured within the time specified, the City may immediately correct or complete the work to its satisfaction and deduct the associated costs from any balances due or to become due to Contractor. Contractor will be liable for difference between cost to the City to complete the Work with other forces and the cost to the City for completion of the Work by Contractor per the contract. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

Employee Identification and Facility Access

Only authorized Contractor employees are allowed on the premises of City facilities. Contractor employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contractor or subcontractor employee.

Confidentiality

"Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the "Effective Date" of contract award by City Council, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential

Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Contract; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Contract; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Contract. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City's written request or expiration of this Contract, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Contract. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: fpc.gov/resources/glossary.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term “process,” “processing,” or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

When Contractor processes PII pursuant to the Contract, Contractor shall, at no additional cost to the City:

- (1) process PII only within the United States and only in accordance with the Contract and not for Contractor’s own purposes, including product research, product development, marketing, or commercial data mining, even if the City’s data has been aggregated, anonymized, or pseudonymized;
- (2) implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice. (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
- (3) not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
- (4) as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
- (5) take reasonable steps to ensure the competence and reliability of Contractor’s personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;

(6) maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Contract and applicable laws;

(7) allow the City or its authorized agents to conduct audit inspection during the term of the Contract, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section.

If Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Contract, Contractor shall notify the City without undue delay within 48 hours; and:

(1) provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

(2) take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

(3) cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

(4) not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section. Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Contract.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available

to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- (1) require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information;
- (2) act on newly acquired information whether or not such information should have been previously discovered;
- (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- (4) object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Contract. Contractor will bear the costs of all inquiries requested by the City.

Contacts With Third Parties

Contractor or its subcontractors shall not contact third parties to provide any information in connection with the deliverables provided under this Contract without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Contract or any other prior or existing contract with the City, Contractor or its subcontractors shall promptly inform the City, giving the particulars of the information sought, and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section shall survive the termination of this Contract.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

No Third Party Beneficiaries

The parties expressly agree that this Contract is not intended by any of its provisions to create any right of the public or any member thereof as a third-party beneficiary nor to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

Non-Disclosure

Contractor shall not disclose, without the City's prior written consent, any information in the performance of the Services under this Contract to any person, firm, corporation, association, or other entity other than persons in the City's organization qualified to receive such information, for any reason or purpose whatsoever, nor shall Contractor make use of any such confidential or proprietary information for its own purposes or for the benefit of any person, firm, corporation, or other entity, except the City.

Contractor agrees to act as a trustee of the foregoing information and as trustee of any other confidential information learned in connection by Contractor's relationship with the City. Contractor further represents to the City that, as an inducement to enter this Contract, Contractor will hold this information in trust and confidence for the City's sole benefit and use.

Further, there shall be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City.

Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Contract, then, and in that event, upon written demand, Contractor shall relinquish to the possession and control of the City its entire file related to this Contract and only those portions of said file deemed by the City to be not privileged shall be returned to Contractor pending the resolution of the existing or anticipated litigation.

Contractor agrees that the requirements of this Section shall be incorporated into any subcontractor agreements entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice. The obligations of Contractor under this Section shall survive the termination of this Contract.

Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Contract or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Contract shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

Accrued Liabilities

Contractor shall be responsible for the payment of all liabilities to its employees accrued during the contract term, including but not limited to accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between Contractor and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by Contractor at the end of the contract term and no additional

compensation shall be provided by the City for such accrued liabilities. Contractor shall not have any obligation for the liabilities of the prior contractor to its employees.

Claims or Demands Against The City

Contractor acknowledges and accepts the provisions of the Charter of the City of Porterville pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in the Charter of the City of Porterville alters, amends or modifies the supplemental and complementary requirements of the State of California Notice of Claim statutes pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

Moreover, nothing in this Contract will constitute a dispute resolution process, an administrative claims process, or contractual term sufficient to affect the date on which the cause of action accrues.

Conflicts of Interest

Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Contract upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Porterville City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Contract without liability, including any such commission, percentage, brokerage or contingent fee.

The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Contract, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Contract, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Contract, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in a California court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

Section IV – Insurance and Indemnification

Standard General Defense and Indemnification

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Porterville and its officers, officials (elected or appointed), agents, and employees (“Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnatee harmless for any Losses arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnatee accrues immediately at the time a claim is threatened or a claim is made against Indemnatee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnatee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnatee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnatee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Porterville. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

Contractor’s Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this Section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors and Contractor may purchase such additional insurance as they determined necessary.

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

Commercial General Liability – Occurrence Form

General Aggregate - \$1,000,000

Products – Completed Operations Aggregate - \$1,000,000

Personal and Advertising Injury - \$1,000,000

Fire Damage - \$1,000,000

Each Occurrence - \$1,000,000

The policy must name the City of Porterville as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.

There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Porterville as an additional insured.

City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.

The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

UM/UIM Per Person Limit \$1,000,000

UM/UIM Per Accident Limit \$1,000,000

- The policy must be endorsed to include the City of Porterville as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Porterville is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

Worker's Compensation and Employers' Liability

Workers' Compensation

Employers' Liability: Statutory

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Porterville.
- This requirement does not apply when a contractor or subcontractor is exempt, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

Property Insurance – Contractor’s Property and Equipment

Contractor must maintain all risk property insurance for Contractor’s personal property. The CITY will have no responsibility for any damage to Contractor’s personal property and Contractor’s property insurance must be endorsed to include a waiver of subrogation against the CITY.

Additional Insurance Requirements

Policies must include, or be endorsed to include, the following provisions:

- 1) On insurance policies where the City of Porterville is named as an additional insured, the City of Porterville must be an additional insured to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by Contract.
- 2) Contractor’s insurance coverage or self-insurance must be primary insurance and non-contributory with respect to all other available sources.
- 3) Coverage provided by Contractor must not be limited to the liability assumed under the indemnification provisions of the Contract.

Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Porterville.

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of California and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be mailed, emailed, or hand delivered to City of Porterville.

Section V - SCOPE OF WORK

The scope of work set forth in this Request for Proposals represents an outline of the goods and services which the CITY anticipates the successful Proposer to perform, and is presented for the primary purpose of allowing the CITY to compare proposals. The precise scope of work to be incorporated into the General Services Agreement shall be negotiated between the City and the successful Proposer. **The CITY requests that the Proposer suggest changes to the scope of work (as a part of the proposal) in order to achieve the CITY's Project Objectives.**

General Overview of Services

The scope of services in this section describes the required services to be provided by the Contractor during the term of the Contract. The Contractor shall supply all labor and any equipment or tools necessary to perform and deliver the services required under this contract.

The City is seeking to award a contract for Managed Compressed Natural Gas (CNG) Fueling Station Maintenance Services to a qualified firm.

The Contractor shall provide proactive, scheduled, and emergency maintenance services for the entire CNG fueling station and the methane detection system above the repair bays in the Maintenance facility. This includes providing all labor, parts, materials, replacement equipment, inspections and testing. All planned and unplanned CNG station and Maintenance facility repair work shall be coordinated with the Shop Superintendent or designee.

Contractor shall perform maintenance and inspection a minimum of once a week. Contractor service must be of such high quantity and quality so that all CNG vehicles will be fueled for operational rollout on any given morning during the contract.

Contractor shall have the capability to remotely monitor the compressor system variables, such as flow, temperature and pressure with a laptop computer and remote alarm 24/7, 365 days a year.

An electronic and hard copy of the maintenance records shall be kept at the Facility site for the City's inspection and must be updated monthly. The City shall permit Contractor trained and certified O/M personnel and its approved vendor subcontractors to enter the compressor compound area, fueling island, and maintenance facility.

At the end of the maintenance agreement, Contractor shall transfer the complete rights or license of all software to the City. All additional electronic files and programs, equipment manuals, and the entire O/M record database shall also be transferred to the City.

List of CNG Station Equipment

Equipment Description	QTY
CNG Compressor	2
Gas Dyer	1
CNG Storage Vessels	3
CNG Fast Fill Dispensers	2
CNG Slow Fill Dispensers	52
Priority/Buffer Control Valve Panel	1
CNG Station Control System	1
Switchgear Compressor Motor Starters	2
Master Control Panel	2

List of Maintenance Facility Equipment

Equipment Description	QTY
Methane Detection Control Panel	1
Exhaust Fans	4
Intake Louvers	4
Methane Sensors	4

Maintenance

The following are the types of maintenance the Contractor is required to perform. All maintenance and/or repairs will be coordinated with the Shop Superintendent or designee.

Proactive Maintenance - monitoring of CNG station systems including critical flow, temperature, pressure, vibrations, leaks, and false alarms. Electronic monitoring is an acceptable alternative to an on-site inspection, subject to approval by the City.

Scheduled Maintenance - specific maintenance performed in conformance with manufacturer's recommendations and industry best practices. Contractor shall develop a scheduled maintenance process per each manufacturer's or vendor's requirements and perform all maintenance on a timely basis.

Emergency Maintenance/Repairs - unplanned service resulting from a system shutdown or failure causing the CNG station to not be fully operational. Contractor shall provide the City with a report of the emergency covering the resources required to fix the problem, the length of time the CNG station or compressor was shutdown, the cause, steps taken to fix the problem, and steps taken to prevent it from happening again. Contractor shall locally store and maintain adequate supply of critical spare parts, based on manufacturer's recommendations, for use in an emergency. A copy of spare parts list shall be provided to the City for review and approval.

Maintenance Technicians

All O/M activities performed by the Contractor will be done in accordance with manufacturer's and vendor's manuals and instructions, and in accordance with best industry standards. Any activity involved with the venting of gas or welding in the general vicinity of the CNG station shall be approved by the Shop Superintendent or designee. Contractor shall review all work proactive, scheduled, and emergency maintenance being performed with the Shop Superintendent or designee prior to commencement.

All materials associated with this service contract for maintenance of the CNG station and Maintenance facility shall be provided by the Contractor unless specified otherwise, and shall be new, unused and of first or Original Equipment Manufacturer (OEM) quality. Workmanship shall be at least equivalent to acceptable standards practiced within the natural gas industry for similar CNG stations.

The Contractor is required to provide qualified service personnel. All service personnel shall be OSHA certified, factory trained and certified by the equipment manufacturers to work on CNG equipment. Contractor shall provide names and qualifications of personnel and all subcontractors assigned to the City. Contractor shall include an organizational chart that clearly delineates all staff assigned to the City.

The Contractor is responsible for furnishing its personnel with vehicles, safety equipment, computers, hand tools, cell phones, general test equipment, gas detectors and other equipment required to service a CNG station. Contractor service personnel shall wear all protection equipment necessary for the job such as but not limited to photo I.D. badge, hard hat, goggles, hearing protection, and a yellow/orange reflective safety vest, jacket or shirt while doing maintenance in the CNG station.

The Contractor's personnel will be required to check-in and check-out with the Shop Superintendent or designee during each site visit.

The Contractor shall provide locally based, company employed service technician(s) for all maintenance services that have demonstrated experience and competency in maintaining other similar CNG station equipment. The Contractor's service technicians are to be available within 3 hours of a call-out, 24 hours per day, 7 days per week for the duration of the contract.

The Contractor shall incur all costs associated with meeting all applicable regulations, codes and standards. The Contractor shall provide all standard and specialty tools to efficiently maintain and service the equipment.

The Contractor is responsible for disposal of all unclassified liquid and solid waste from the CNG station O/M work.

Compressor Compound and Fuel Dispensing Area

The Contractor shall keep the compressor(s) and related controls free from excessive wear, in good working order, and free of detectable leaks. The fueling panels, hoses, nozzles, and related fueling components shall be free from excessive wear, in good working order, and free of detectable leaks. All leaks shall be immediately repaired.

System Monitoring and Alarms

The CNG station and maintenance facility monitoring and alarm system must be operational always. Bypassing of alarms and shutdown systems will not be allowed without specific approval by the City. The monitoring and alarm system shall be tested and calibrated monthly. The ESD system shall be tested monthly and reset. All testing and calibration of the monitoring and alarm system shall be coordinated with the Shop Superintendent or designee. Contractor's monitoring system shall be capable of proactively troubleshooting and diagnosing CNG station failures remotely and dispatching technician support as needed.

Permits and Local Licenses

The Contractor shall obtain and pay for all permits and licenses necessitated by his operations. Prior to starting any work, the Contractor will be required to obtain a City of Porterville Business license.

Work Performance

All work shall be completed in a competent manner per industry best practices. All personnel engaged in maintenance of the CNG station and maintenance facility, including subcontractors, will be considered as employees of the Contractor. The Contractor will be responsible for their work. The City will deal directly with and make all payments to the prime Contractor. The subcontracting of any or all the work to be done will in no way relieve the Contractor of any responsibilities as outline in the contract agreement.

Exceptions

The only costs associated with maintenance and operation of the CNG station that are not the responsibility of the Contractor are those related to damage, neglect, or misuse not caused or controlled by the Contractor, such as a dispenser drive away or vandalism.

Scheduling of Preventive Maintenance Service

Contractor shall perform preventive and scheduled maintenance work Monday through Friday between the hours of 6 a.m. and 5 p.m. The Contractor may perform unscheduled repairs upon approval of the City.

Proposal Format

Proposals should be clear, concise, and provide detailed information concerning the Proposer's ability to successfully perform the obligations as described in the Scope of Work. All Proposals shall include the following documentation in the proposal package:

1. Cover Letter
 - a. Cover letter shall introduce the Proposer and establish interest in providing a turnkey CNG Fueling Station Maintenance Services that meet the requirements of the City.
 - i. An individual duly authorized to commit resources on behalf of the Proposer must sign the letter.
2. Experience Statement
 - a. Indicate how many years of experience Proposer has in providing CNG Fueling Station Maintenance Services.
 - b. Indicate how many years of experience Proposer has in the CNG Fueling Station Maintenance Services.
3. Describe the approach and work plan used by the Proposer to provide the services described in the Scope of Services contained in this RFP.
 - a. # of staff dedicated to the City
 - b. Proposed tasks and deliverables for the required services
 - c. Description of any performance measures for tracking all work, maintenance reports, service tickets, service milestones, etc.
4. Provide a list of at least three (3) references, current or past customers; including company name, address, contact name, phone number, current email address that have purchased units similar to the City's request.
5. Provide a contract price proposal
6. Provide an estimated project schedule
7. Complete and submit all required forms

Section VI – Federal Transit Administration (FTA) Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in

addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention**. Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period**. Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records**. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance**. Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; (b) exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (d) federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."
6. Equal Employment Opportunity for Construction Activities. When undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the

preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.
- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.
- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall

continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.

- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381);
- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-

loading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working

conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee,

social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or

other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.
- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S.

Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.

- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.
- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then

FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility**. Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements**. Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver's License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use**. Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving**. Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug

Use in Transit Operations” (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.

- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: (A) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (B) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; (C) telecommunications or video surveillance services provided by such entities or using such equipment; and (D) 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (b) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.
2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. Environmental Justice. Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental

Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order Nos. 11988 and 13690 relating to “Floodplain Management.”
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.
7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R. part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an

- academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 - C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
 - D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by

the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.

G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C.

§ 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

The Proposer acknowledges it has received and read the following Addenda:

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Addendum # _____ Signature _____

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form B

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☐ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it:

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF CALIFORNIA

COUNTY OF _____

_____ declares and says:

1. That he/she is the (owner, partner, representative, or agent) of _____, hereinafter referred to as (CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form E

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form F

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Form G

ACKNOWLEDGEMENT OF “BEST VALUE” SELECTION PROCESS

PROPOSER hereby acknowledges that the selection process under this RFP will evaluate Proposals on a “Best Value” basis, which the Federal Transit Administration’s (FTA) Best Practices Manual defines as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

As a result, PROPOSER further acknowledges that pricing will not be the sole basis upon which Proposals are evaluated.

An individual authorized to bind the PROPOSER to this Agreement must sign below acknowledging and understanding of the foregoing.

Company: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Exhibit B – Sample General Services Agreement

CITY OF PORTERVILLE GENERAL SERVICES AGREEMENT WITH *[insert full name of Contractor and Project Name and/or number]*

This General Services Agreement (Agreement) is entered into between the City of Porterville, a municipal corporation (**City**), and _____ [complete name of legal business entity], a _____ [business status, such as a California corporation] (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A. City desires to retain Contractor to complete a XXXXXXXXXX Project (Project); and
- B. On XXXXXXXX, the City issued a Request for Proposals (RFP) for the XXXXXXXXXX (Project). On XXXXXXXX, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the goods and services.
- C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. _____-2024 approved by the Porterville City Council on _____, 2024.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall provide the goods and services required to complete the Project, described in Exhibit “A” attached hereto and incorporated herein by reference. The goods and services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: _____. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractor or subcontractor, without City’s prior written consent. The City may terminate this Agreement if Contractor makes any such change or replacement, or uses any unapproved subcontractor or subcontractor.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all

requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1. Term. The Term of this Agreement shall begin on _____ and end on _____, unless terminated in accordance with Section 6.

3. Compensation. City shall pay Contractor on a lump sum basis, at the billing rate set forth in Exhibit “C”, attached hereto and incorporated herein by this reference for goods and services performed under this Agreement.

3.1. Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$ _____. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City’s prior written approval. Notwithstanding anything contained herein to the contrary, the payment of any funds under this Agreement shall be subject to the City of Porterville’s appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

3.2. Invoices. Contractor shall submit monthly invoice(s) to the City that describe the goods and services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor’s failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Contractor.

3.3. Payment. Subject to the City acceptance of the Services as discussed in Exhibit A attached hereto and completion of the Project to the City’s satisfaction, within 30 days after the City’s receipt of invoice(s), City shall make payment to the Contractor based upon the services described on the invoice(s).

3.4. The acceptance by Contractor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Contractor for anything completed, finished or relating to Contractor’s services. Contractor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Contractor or its employees, subcontractors, agents and subcontractors for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Contractor, its employees, subcontractors, agents and subcontractors.

3.5. Contractor agrees to maintain books, accounts, payroll records and other information relating to the performance of Contractor’s obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Contractor in the

performance of Contractor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

- 4. Indemnification.** Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In the event there is a finding and/or determination that Contractor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Contractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any all claims relating to or in connection with such a finding and/or determination.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

Contractor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

- 1. Insurance.** Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representative, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 1.1. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

- 1.2. Automobile Liability** (with coverage at least as broad as ISO CA 00 01 07 097, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 1.3. Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 1.4. Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.
- 1.5. Endorsements.** Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 1.5.1.** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 1.5.2.** For any claims related to this Agreement, Contractor’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor’s insurance and shall not contribute with it.
- 1.6. Notice of Cancellation.** Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.
- 1.7. Authorized Insurers.** All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 1.8. Insurance Certificate.** Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.
- 1.9. Substitute Certificates.** Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 1.10. Contractor’s Obligation.** Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

2. **Termination.** The City may terminate this Agreement in its sole and absolute discretion by giving ten (10) days' written notice to Contractor. Within five (5) days of such a termination, Contractor shall give the City all original documents relating to the Services in Contractor's possession or control, including, without limitation, preliminary drafts and supporting documents, and any other documents prepared by Contractor pursuant to this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
3. **Dispute Resolution.** If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:
 - 3.1. Each Party shall designate a senior management or executive level representative to negotiate the dispute.
 - 3.2. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority,
 - 3.3. If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 3.4. The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person to serve as the mediator, shall be commenced within thirty (30) days of selection of a mediator, and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 3.5. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 3.6. The dispute resolution process is a material condition of this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.
4. **Labor Code Compliance.** Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

5. **Rates.** These prevailing wage rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.
6. **Registration with DIR.** Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5
7. **Monitoring.** This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.
8. **Ownership of Work.** All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's Services, upon termination of this Agreement, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.
9. **Independent Contractor Status.** Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.
10. **Conflicts of Interest.** Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.
11. **Rebates, Kickbacks, or Other Unlawful Consideration.** Contractor warrants this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
12. **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after

the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Porterville
Transportation Department
291 N. Main Street
Porterville, CA 93257

To Contractor

13. Miscellaneous

13.1. Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13.2. Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

13.4. Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's prior written consent. Any attempt to do so will void. City's consent to one assignment, transfer or delegation shall not be deemed to be consent to any subsequent assignment, transfer or delegation.

13.5. Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Tulare.

13.6. Compliance with Law. Contractor shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

13.6.1. Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

13.6.2. Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, color, national origin,

handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.)

- 13.7. Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.
- 13.8. Business License.** Before the City signs this Agreement, Contractor shall obtain a City of Porterville Business License. Contractor shall maintain an active City of Porterville Business License during the term of this Agreement.
- 13.9. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 13.10. Construction of Agreement.** Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.
- 13.11. Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 13.12. Controlling Provisions.** In the case of any conflict between the terms of this Agreement and Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.
- 13.13. Entire Agreement.** This Agreement and the Attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.
- 13.14. Counterparts.** City and Contractor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.
- 13.15. Expenses for Enforcement.** Contractor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

14. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

The Parties agree to the full performance of these terms set forth here.

City of Porterville
291 N. Main Street
Porterville, CA 93257

Contractor

By: Martha A. Flores

By: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Federal Employer Tax ID No. _____

Signature: _____

Signature: _____

Attest:

Patrice Hildreth, City Clerk

Approved as to form:

Julia M. Lew, City Attorney

Exhibits:

- A. RFP No.XXX XXXXXXXXXXXXX
- B. Contractor Proposal
- C. Compensation



City of Porterville Compressed Natural Gas (CNG) Fueling Station Maintenance Services

John Hodgkinson
Director, Business Development
Clean Energy
949.315.9959
John.Hodgkinson@cleanenergyfuels.com

September 24, 2024

RFP No. 24/25-SR1982



Section 1. Cover Letter

September 24, 2024

Richard Tree
City of Porterville
555 N. Prospect
Porterville, CA 93257

Re: Cover Letter - RFP No. 24/25-SR1982 Compressed Natural Gas (CNG) Fueling Station Maintenance Services

Dear Mr. Tree:

Clean Energy appreciates the opportunity to earn the City of Porterville's (City) business through this CNG maintenance solicitation. Your selection of a reliable CNG maintenance service provider is critical to the continued success of your fueling operations. Clean Energy has an excellent track record and the right team, resources, and experience to meet your maintenance needs and requirements. Below is a summary of the advantages Clean Energy will offer to the City:

- **Local, Trained Staff.** Clean Energy's local technicians are fully trained and experienced with maintaining your equipment, and other stations that are nearly identical. Our closest technician is less than 45 minutes driving distance from your site. As a backup, we have a large team of over 40 technicians in the Central and Southern CA area. Our technicians complete rigorous CNG training courses at our training facility and are certified to work on a variety of CNG compressors and equipment.
- **Around The Clock Support.** Clean Energy's technicians work scheduled day and night shifts, so any time your station has an issue, we respond quickly. Our headquarters in Newport Beach houses our Command Center, which is staffed 24/7/365 and actively monitors the status of your station. When possible, minor alarms are reset remotely, and when needed, technicians are dispatched to your station quickly.
- **Parts Access.** Our customers and technicians have access to a large inventory of parts in our main warehouse in Carson, CA, which enables us to provide parts to your site quickly to avoid station downtime. We also maintain thousands of inventory items at three other regional parts warehouses located across the country. For speed of service, our technicians keep an inventory of common spare parts directly in their vehicles.

Clean Energy

4675 MacArthur Court, Suite 800

Newport Beach, CA 92660

949.437.1000

CleanEnergyFuels.com



John Hodgkinson, Director, Business Development, is the main contact during the proposal evaluation. He can be reached at John.Hodgkinson@cleanenergyfuels.com, phone: (949) 315-9959.

I, Chad Lindholm, am authorized to commit resources on behalf of the proposer for this contract with the City.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chad Lindholm', with a horizontal line extending from the end.

Chad Lindholm
Senior Vice President

Table of Contents

SECTION 1. COVER LETTER	2
SECTION 2. EXPERIENCE STATEMENT	5
SECTION 3. APPROACH AND WORK PLAN	6
SECTION 4. REFERENCES	12
SECTION 6. PROJECT SCHEDULE	15
SECTION 7. REQUIRED FORMS	16
SECTION 8. SAMPLE CUSTOMER SITE REPORT	17

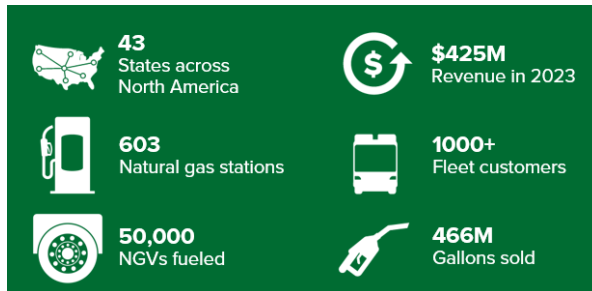
Section 2. Experience Statement

Clean Energy Brief Profile

Clean Energy provides RNG, CNG, LNG, LCNG, hydrogen, renewable electricity, and energy management solutions across North America. We are headquartered in Newport Beach, California and have regional offices in Colorado, Texas, New Hampshire, British Columbia and Ontario. Our Newport Beach office will be the primary location for the City's account.

We were established in 1996 and have been a publicly traded corporation since 2007 (Nasdaq: CLNE). In June 2018 we received a significant equity investment from TotalEnergies, one of the largest energy companies in the world. We serve fleet vehicle operators in a variety of markets, including public transit, heavy-duty trucking, airports, refuse, industrial and institutional energy users, and government fleets.

Our 527 employees provide services including fueling station operation and maintenance, station design and construction, facility modification, and supply of renewable fuel to our customers.



Over 27 Years of CNG Maintenance Services Experience

Clean Energy has provided **CNG fueling station maintenance services** for public agencies and private fleets **since 1996**. We operate and maintain over 100 natural gas stations for transit and solid waste properties in California, and many more for other customers. By awarding us this project, the City would benefit from this broad experience. Other Central California maintenance customers include Kings County Transit, Southwest Transportation Agency, City of Tulare, City of Bakersfield, and Van De Pol in Madera.

We have installed, operate and maintain over 100 Ariel compressors and maintain many sites with fast-fill dispensers, priority panels and control systems like yours. Clean Energy's team of direct-employed service technicians are trained and authorized to service Ariel and other compressors. We also continue to keep up with the latest industry standards, local and state regulations, codes and ordinances pertaining to natural gas fueling station operation and maintenance. Our specific approach to performing inspections, preventative maintenance and emergency and non-emergency repairs is outlined in detail on the following pages our proposal.



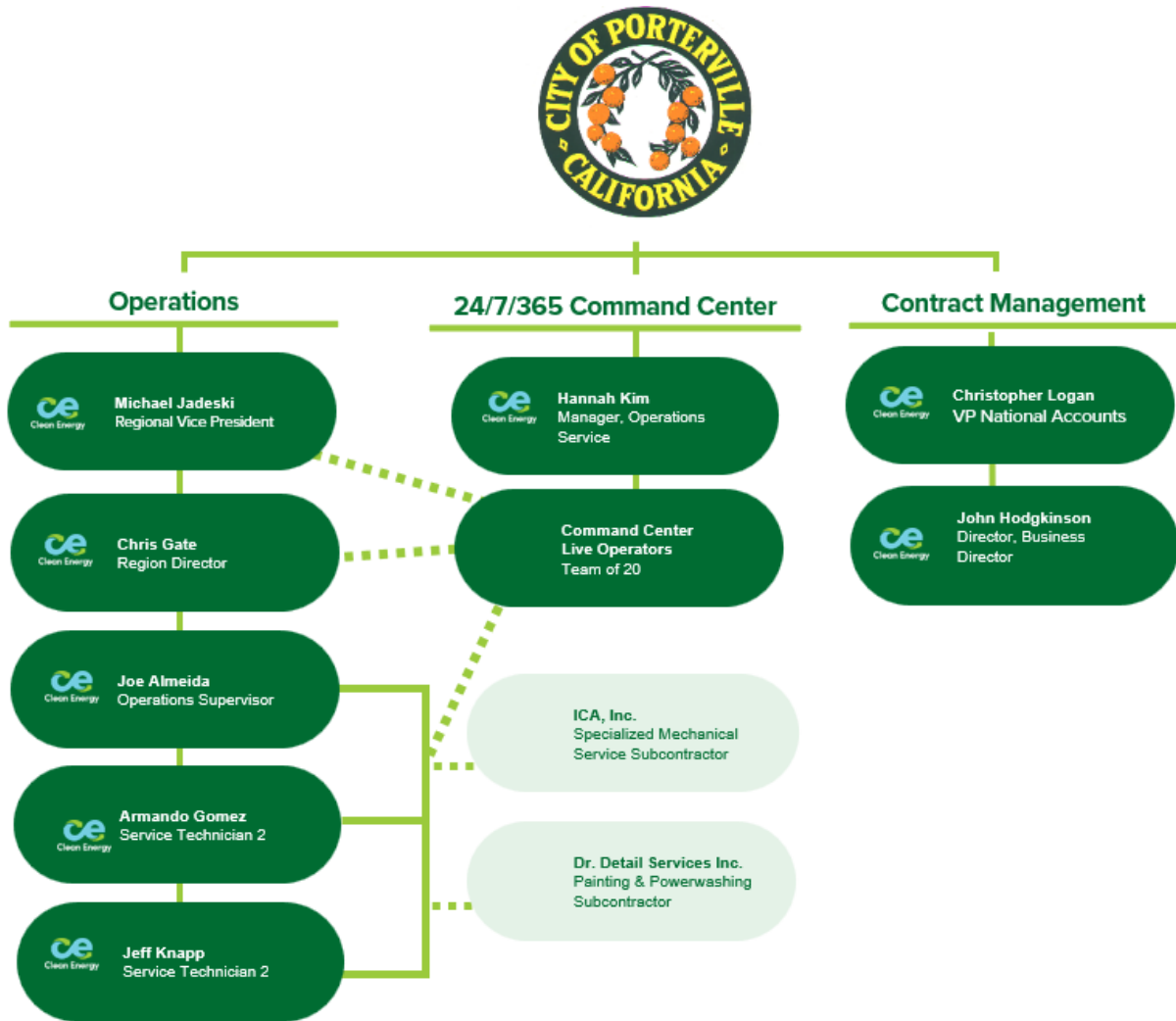
Section 3. Approach and Work Plan

Personnel and Project Organization Chart

Our primary project team assigned to the City includes five employees that are either based at our headquarters or are field-based and local; as a result, our local presence promotes ease of coordination and customer care for the City's contract.

We will self-perform the specialized CNG maintenance services described herein to ensure the contract is diligently followed and we perform to the highest standards. Clean Energy's primary project team includes operational and contract support personnel.

- **Chris Gate, Project Manager & Director of Operations.** Chris will serve as the City's Project Manager and he will oversee the supervisory and service technician team that is assigned to the City's maintenance contract. He has 35+ years of operational management experience.
- **Joe Almeida, Operations Supervisor.** Joe serves as the supervisor managing the service technician team that is responsible for performing maintenance and repair service at the City's CNG stations. Joe is an experienced operations leader with more than 25 years of experience.
- **Armando Gomez, Service Technician II.** Armando will perform maintenance and repair service at the City's station. Armando has 28 years of mechanical experience including 6 years of CNG maintenance service experience.
- **Jeff Knapp, Service Technician II.** Jeff will perform maintenance and repair service at the City's station. Jeff has 25 years of mechanical experience including 2 years of CNG maintenance service experience.
- **John Hodgkinson, Sales Director.** As City's Contract Manager and main point of contact, John will coordinate contract activities and ensure contract compliance with the support of Clean Energy's Operations group. John has over 10 years of professional experience in the renewable natural gas, fuel sales, marketing, and solid waste industry. John has a B.A. in Political Science and Economics from the University of Delaware.



Subcontractor

Clean Energy will perform the specialized CNG maintenance services. We have identified subcontractors that are long-time subcontractors for Clean Energy who perform non-specialized CNG services on an as-needed basis. Both subcontractors would likely perform less than 20 hours of work each year on this contract. Please note, that if the City has a preferred vendor we will gladly entertain other subcontractors.

ICA Inc. will provide as needed specialized mechanical services such as pressure vessel welding. We have worked with ICA Inc. on numerous contracts where they've

provided specialized mechanical services such as pressure welding and laser alignment for 15 years and their contact is Enrique Lopez.

Dr. Detail Services, certified DBE, will provide station equipment pressure washing for the City's new contract. We have worked with Dr. Detail on numerous contracts for 12 years where they've provided steam cleaning of the CNG compressor compounds and the dispensers, as well as re-painting equipment as needed to prevent corrosion and maintain a tidy appearance. Dr. Detail's contact person is Karen Barragan.

Scope of Services and Deliverables

Clean Energy will provide proactive, scheduled, and emergency maintenance services for the CNG fueling station and the methane detection system in the Maintenance facility. Each technician has a fully stocked CNG truck with the most replaced and common parts. Prior to each site visit, our technician will wear all required personal protective equipment and check-in and check-out with the shop superintendent. All repair and maintenance activities performed by Clean Energy or authorized subcontractor(s) will be done in accordance with equipment manufacturer's manuals and in accordance with best industry practices. All parts and materials used during repairs will be new unless the City directs us to use its existing inventory of parts. All parts warranty will be passed through to the City and we provide 30 day warranty on our workmanship.

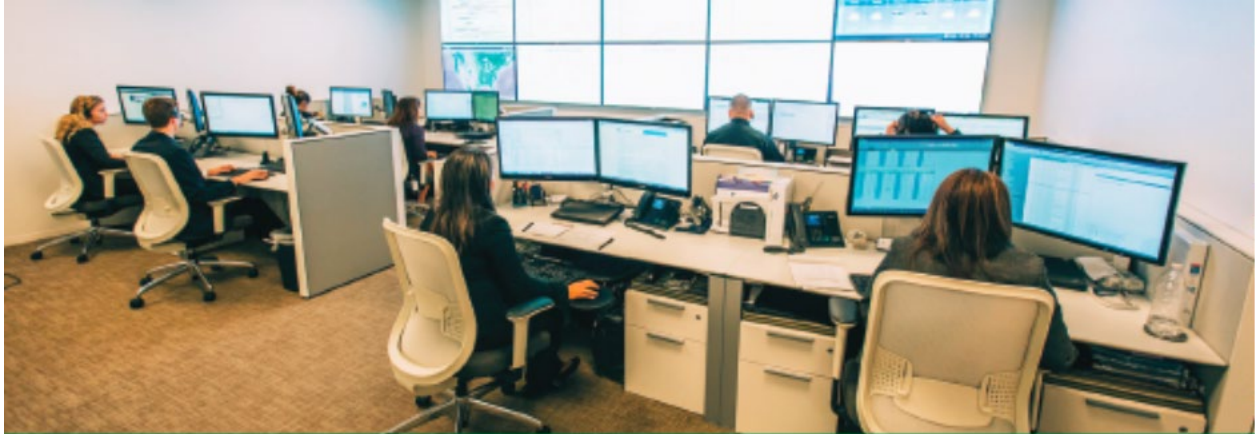
Remote Monitoring

Our Operations Center located in Newport Beach, CA is staffed by 20 Clean Energy employees 24/7/365 to monitor real time station status and performance, as well as to detect any faults or alarms that occur. Once a fault is detected, our Operations Center staff will immediately evaluate the situation and determine the correct response. When our customers call our Operation Center, our average response time is 45 seconds.

Beyond monitoring for fault conditions, Clean Energy staff can view real time station status on our corporate SCADA system in our Operations Center or by directly connecting to the station. This provides two methods for Clean Energy to reset fault conditions and gives our staff remote access to update set points and monitor station performance.

Our remote monitoring system is a proactive and robust system giving our Operations Center and service technicians complete visibility of station functionality, systems operations, and live data. In many cases, our Operations Center can identify and correct station issues without our customers knowing the equipment had ever faulted.





Clean Energy's Command Center. Live 24/7/365 operators respond to customer calls. This team is responsible for communicating with customers, dispatching technicians, and documenting the resolution steps taken for each call.

Routine Preventative Maintenance

One of our OSHA certified technicians will be onsite a minimum of once per month to complete the OEM recommended preventative maintenance. Our technician will go through the entire station, check the equipment to ensure everything is operating within the OEM specifications, and update the maintenance logs. These site visits will be coordinated by our maintenance planners and communicated to City's onsite personnel. Following each preventative maintenance, the City will receive a work order confirming all maintenance activities. Under this program, the City personnel will be responsible for daily and weekly maintenance tasks.

Corrective Repairs

Repair work is greatly minimized by Clean Energy's preventative maintenance but with heavy machinery, high horsepower, pressures and temperatures, and hundreds of moving parts plus electronics, unscheduled maintenance becomes inevitable at some point. Correctives can range from a simple station component failure to a serious safety incident. In any case, our protocol ensures a high level of communication and transparency throughout the resolution process. Clean Energy's emergency callout plan is triggered by any of the following:

- An email or auto dialer message triggered by a station fault.
- Our 24/7 Operations Center being alerted by our server-based SCADA system.
- City reporting a station performance or safety issue.

Under any of the scenarios the following response will be initiated:

- Command Center staff will remotely review the fault or situation and try to rectify the problem via a station reset or set point adjustment. If they are unable to resolve the issue a technician will be notified.
- A technician will remotely dial-in and troubleshoot the problem. If a remote fix is unavailable, the technician will dispatch to the station or schedule a service visit within twelve hours of being called out to the site.
- Once corrected, the City will be given a full debrief including the corrective measures taken to address the problem.

Site Reports

Clean Energy provides monthly Site Reports to all our service customers. Customer feedback indicates that these reports provide great value, because they provide a clear history of service activities and issue corrections at their respective CNG stations. The reports detail work order numbers, dates and parts that have been installed, and who (which technician) performed the work. They also categorize activities as inspections, preventative maintenance, and correctives. This level of transparency and detail is not provided by most CNG service contractors. The City will receive Site Reports for your site as an integral part of our comprehensive maintenance program.

Table 1. R&M Maintenance Summary	
Service	R&M
Routine Monthly Inspections	x
Routine Station Maintenance: All routine maintenance, materials, warranty, parts & labor	T&M rates in Pricing Section
Non-Routine/Emergency Callouts: All parts (warranty & non-warranty) & labor	T&M rates in Pricing Section
Major Parts Overhaul/Replacement	T&M rates in Pricing Section
Monthly Reports: Electronic station maintenance reporting	x

Monitoring & Alerts: 24/7 station monitoring & technician deployment	x
Onsite Technician Response Time for Emergency	3 Hours
Pricing Structure	Monthly Fee + T&M

Armando Gomez

Service Technician 2

CNG Experience

6 Years

Licensing/ Certifications/ Training

- Ariel online and mechanic training
- IMW 1 and 2 Training
- Clean Energy Technician Training 1/2 and 2/2
- Electrical 1 classroom
- Electrical 2 classroom
- Gilbarco dispensers
- LNG advanced Training
- PLC Training
- PSB Training
- Swagelok Training



Professional Profile

Armando is responsible for performing preventative, scheduled, and non-scheduled maintenance and repair services at Clean Energy's and customer-owned CNG and LNG fueling stations in Central Valley California.

In addition to his maintenance duties, Armando provides basic CNG equipment and safety training for first-time CNG users, as well as maintenance training for customer's maintenance staff.

Prior to Clean Energy, Armando acquired 28 years of mechanical experience.

Professional Experience

Service Technician 2

Clean Energy, 2016 – Present

Electrical Mechanical Technician

Paramount/Pistachios, 2012 – 2013

Industrial Facility Service Technician

Desert Block, 2016 – 2016

ATM Field Service Tech

Windcor, 2008– 2012

Lead Industrial Technician

Paramount/Wonderful Cuties,
2013– 2015

Maintenance Technician

Nestle/Dreyers, 1994 – 2008

Relevant Project Experience

City of Tulare | Tulare, CA

Facility type: Public, fast-fill LNG & LCNG fueling station for transit buses, waste fleets, and trucking fleets

Scope of work: Operate and maintain station

Southwest Transportation | Caruthers, CA

Facility type: Public/Private, fast-fill LNG & LCNG fueling station for transit buses, waste fleets, and trucking fleets

Scope of work: Operate and maintain station

Waste Management | Fresno, CA

Facility type: Private, fast-fill LNG fueling station for waste fleets

Scope of work: Operate and maintain station

Kings County Area Public Transit Agency

Facility type: CNG fueling station

Scope of work: Maintenance service repairs, service interval rebuilds and inspections

Jeff Knapp

Service Technician 2

Mechanical Experience

25 Years

Licensing/ Certifications/ Training

- Ariel online and mechanic training
- IMW 1 and 2 Training
- Clean Energy Technician Training 1/2 and 2/2
- Electrical 1 classroom
- Electrical 2 classroom
- Gilbarco dispensers
- LNG advanced Training
- PLC Training
- PSB Training
- Swagelok Training



Professional Profile

Jeff is responsible for performing preventative, scheduled, and non-scheduled maintenance and repair services at Clean Energy's and customer-owned CNG and LNG fueling stations in Central Valley California.

In addition to his maintenance duties, Jeff provides basic CNG equipment and safety training for first-time CNG users, as well as maintenance training for customer's maintenance staff.

Prior to Clean Energy, Jeff has 25 years of mechanical experience.

Professional Experience

Service Technician 2

Clean Energy, 2022 – Present

Maintenance Mechanic Lead

Foster Farms, 2008 – 2012

Lead Maintenance Mechanic

Wonderful Citrus, 2012 – 2022

Field Service Tech

Seacap Mailing Solutions,
1997– 2008

Maintenance Mechanic

Nichols Farms, 2010 – 2012

Relevant Project Experience

City of Tulare | Tulare, CA

Facility type: Public, fast-fill LNG & LCNG fueling station for transit buses, waste fleets, and trucking fleets

Scope of work: Operate and maintain station

Southwest Transportation | Caruthers, CA

Facility type: Public/Private, fast-fill LNG & LCNG fueling station for transit buses, waste fleets, and trucking fleets

Scope of work: Operate and maintain station

Waste Management | Fresno, CA

Facility type: Private, fast-fill LNG fueling station for waste fleets

Scope of work: Operate and maintain station

Kings County Area Public Transit Agency

Facility type: CNG fueling station

Scope of work: Maintenance service repairs, service interval rebuilds and inspections

Section 4. References

Reference 1: Kings Area Regional Transit - *formerly Kings County Area Public Transit Agency* (Confidential)

Name: Angie Dow, Executive Director

Address: 610 W 7th St, Hanford, CA 93230

Phone: (559) 851-2717 | Email: angie.dow@co.kings.ca.us

Contract Dates: August 2022 - Present

Contract Description: Repair and Maintenance

Status of contract: Active

Reference 2: Southwest Transportation Agency (Confidential)

Name: Gary Geringer, Agency Director

Address: 16644 S Elm Ave, Caruthers, CA 93609

Phone: (559) 644-1000 | Email: ggeringer@southwestjpa.org

Contract Dates: December 2016 - Present

Contract Description: Repair and Maintenance

Status of contract: Active

Reference 3: Van De Pol (Confidential)

Name: Van De Pol

Address: 1200 S. Gateway Drive, Madera, CA 93637

Phone: (209) 607-0352 | Email: curtis@vandepol.us

Contract Dates: July 2023 - Present

Contract Description: Repair and Maintenance

Status of Contract: Active



Section 5. Contract Price Proposal

Below is a pricing summary for the scope of services. Please note, that Clean Energy will charge a one-time installation fee of \$10,370.00 for our proprietary remote monitoring system. This system will not interfere with the City's internal remote monitoring software. This is an additional monitoring system that will allow our operations center 24/7 visibility of the station.

Table 1. R&M Program Schedule of Values		
Item Description	Billing Frequency	Rates
Site Inspection	Monthly	\$1,520.00
24/7 Remote Monitoring	Monthly	\$725.00
Hazardous Waste Oil Removal (Optional)	Monthly	\$267.00
Time & Material Service: Service repair work performed outside of monthly site visits	Hourly 8:00am - 5:00pm Monday - Friday	\$160.00
	Hourly 5:01pm – 7:59am Monday – Friday Weekends/Holidays	\$240.00
	As-Needed Parts	List minus 10%

Pricing Assumptions

- The Site Inspection and Time & Material rates subject are subject to annual CPI.
- The Site Inspection scope of work includes testing the Facility methane system monthly. We assume no lift is required to access and the Facility Methane system. Any repairs for the Facility Equipment will be outsourced to a qualified third party and approved by the City.

-
- All work outside of the site inspection (callouts, repairs, rebuilds, PRV recertifications, dispenser calibrations, etc.) will fall outside of the monthly charge and be billed at Time & Materials.
 - No prevailing wages.
 - Clean Energy reserves the right to negotiate mutually agreeable terms after award.

Section 6. Project Schedule

Below is a project schedule for this maintenance program. Should the City have additional questions or need further information, please contact John Hodgkinson at (949) 315-9959 or john.hodgkinson@cleanenergyfuels.com.

Table 2. Project Schedule	
Event	Date of Event
Service Commencement	Following Contract Execution. RFP projection is November 1, 2024.
Site Inspections	Will be performed monthly and communicated to City personnel.
Callouts and Repair Work	Will be scheduled following approval from City personnel. Callouts and repairs are initiated by remote monitoring station/facility faults or by customer request.
Preventative Maintenance	Items include rebuilds, PRV recertifications, dispenser calibration, etc. Will be scheduled following approval from City personnel.

Section 7. Required Forms

Exhibit A – Required Forms

Form A

ADDENDUM RECEIPT

The Proposer acknowledges it has received and read the following Addenda:

Addendum # 1 issued August 23, 2024

Signature



Addendum # 2 issued September 17, 2024

Signature



Addendum # _____

Signature

Addendum # _____

Signature

Addendum # _____

Signature

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature:



Date: September 20, 2024

Form B

DEBARMENT AND SUSPENSION CERTIFICATION

This certification does not apply to contracts and subcontracts under \$25,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

Check one box below (and provide explanation if necessary):

☒ The Proposer certifies that the Proposer and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any federal department or agency;
2. Have not, within the preceding three years, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense described in Paragraph 2 of this certification;
4. Have not, within the preceding three years, had one or more public transactions (federal, state, or local) terminated for cause or default.

- OR -

☐ The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In the explanation, the Proposer must certify to those statements that can be certified and explain why the other statements cannot be certified.)

The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature: 

Date: September 20, 2024

Form C

BUY AMERICA CERTIFICATION

This certification applies to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

If this Offer is valued in excess of \$150,000 and involves the procurement of steel, iron, or manufactured products (as defined in 49 CFR §§ 661.3 and 661.5), the Proposer hereby certifies that it:

☒ Will comply with the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR part 661;

OR

☐ Cannot comply the requirements of 49 U.S.C. § 5323(j) (and 49 CFR part 661) but may qualify for an exception to the requirements pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

If this Offer is valued in excess of \$150,000 and involves the procurement of buses or other rolling stock (including associated equipment), the Proposer hereby certifies that it: **Not applicable**

☐ Will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 CFR § 661.11;

OR

☐ Cannot comply with the requirements of 49 § U.S.C. 5323(j) (and 49 CFR § 661.11), but may qualify for an exception to the requirements consistent with 49 U.S.C. § 5323(j)(2)(C), as amended, and the applicable regulations in 49 CFR § 661.7.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature: 

Date: September 20, 2024

Form D

NON-COLLUSION AFFIDAVIT FOR PROPOSER

STATE OF CALIFORNIA

COUNTY OF ORANGE

Chad Lindholm declares and says:

1. That he/she is the (owner, partner, representative, or agent) of Clean Energy, hereinafter referred to as (CONTRACTOR) or (subcontractor).
2. That he/she is fully informed regarding the preparation and contents of this proposal for certain work in the City of Porterville, State of California.
3. That his/her proposal is genuine and is not collusive or a sham proposal.
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful Contract or connivance with any other proposer, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful Contract any advantage against the City of Porterville or any person interested in the proposed contract; and,
5. That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful Contract on the part of the proposer or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature: 

Date: September 20, 2024

Form E

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This certification does not apply to contracts and subcontracts under \$100,000. Offers that do not include this completed certification, if applicable, will be rejected as nonresponsive.

The Proposer certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of an 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.
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 federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Proposer shall require that the language of this certification be included in the contract documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature: 

Date: September 20, 2024

Form F

TAX LIABILITY CERTIFICATION

This certificate applies to all contracts. Offers that do not include this completed certification will be rejected as nonresponsive.

The Proposer certifies that:

1. It has no 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;
2. It has not been convicted of a felony criminal violation under any federal law within the preceding 24 months; and
3. It shall require that the language of this certification be included in the award documents for all subcontractors and material suppliers at all tiers, and that all subcontractors and material suppliers shall certify and disclose accordingly.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §§ 3801 et al. are applicable to this certification.

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature: 

Date: September 20, 2024

Form G

ACKNOWLEDGEMENT OF “BEST VALUE” SELECTION PROCESS

PROPOSER hereby acknowledges that the selection process under this RFP will evaluate Proposals on a “Best Value” basis, which the Federal Transit Administration’s (FTA) Best Practices Manual defines as follows:

“Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

As a result, PROPOSER further acknowledges that pricing will not be the sole basis upon which Proposals are evaluated.

An individual authorized to bind the PROPOSER to this Agreement must sign below acknowledging and understanding of the foregoing.

Company: Clean Energy

Name: Chad Lindholm

Title: Senior Vice President

Signature: 

Date: September 20, 2024

Section 8. Sample Customer Site Report



Work Order ID:

Date of Service:

Service Location: <SITE NAME>

Bill To Location: <CUSTOMER NAME>

<SITE ADDRESS>

Date	Activity	Item/Description	Quantity/Hrs	Unit Price	Extended Price	Currency
Totals					\$0.00	

Work Order Reason:	0001 - Site Inspection
Primary Incident Description:	Site Inspection
Customer Asset:	<SITE NUMBER> CNG Site
Cause Code:	
Action Code:	

Customer Asset	Question	Response
13301 CNG Site	Check entire site for visible damage	
13301 CNG Site	Check landscape condition	
13301 CNG Site	Does the site require steam cleaning to remove oil and grease?	
13301 CNG Site	Check signage for wear and fading	
13301 CNG Site	Verify that area lights are working	
13301 CNG Site	Check all piping, tubing, and for leaks, including defueling panel (if applicable)	
13301 CNG Site	Pick up trash and debris around the site.	
13301 CNG Site	General - Bag all trash from site and empty trash cans.	
13301 CNG Site	Clean up oil leaks	
13301 CNG Site	Any repairs required?	
13301 CNG Site	Any leaks found?	
13301 CNG Site	Enter MSA reading (if applicable)	
13301 CNG Site	Enter electric meter reading (if applicable)	
13301 CNG Site	Test ESD system to make sure system shuts down safely.	
Compressor A1	During operation, check/record/verify compressor performance data.	
Compressor A1	Visually inspect compressor hoses, tubing, piping, and valves for leaks and abnormalities.	
Compressor A1	Listen for any abnormal sounds (e.g., banging or hissing).	
Compressor A1	Check priority panel for proper operation, if applicable.	
Compressor A1	Check control gas regulator, adjust, look for frost/leaks.	
Compressor A1	Inspect pressure gauges for leaking glycerin	
Compressor A1	Drain all inter-stage scrubbers and record weight	
Compressor A1	Drain suction filter and record weight	
Compressor A1	Drain discharge filters and record weight	
Compressor A1	Drain recovery tank and record weight	
Compressor A1	Drain vent stack and record weight	





Work Order ID:

Date of Service:

Service Location: <SITE NAME>

Bill To Location: <CUSTOMER NAME>

<SITE ADDRESS>

Customer Asset	Question	Response
Compressor A1	Check intake/outlet air louver operation (if applicable). Adjust as necessary.	
Compressor A1	Check bolts, clamps, and nuts for tightness. Torque if necessary. Reference Torqueing Guide for Specification	
Compressor A1	Check and record frame oil pressure when at operating temperature. Compressor inlet oil temperature is 190°F (88°C) maximum. (it should be 50 to 60PSIG)	
Compressor A1	The frame oil level should be visible in the sight glass and approx. mid-level when running, if not, determine and correct cause. Do not overfill. (ARIEL ONLY)	
Compressor A1	Check packing vents for blowing gas, measure and record gas volume.	
Compressor A1	Wipe Down / Clean Compressor	
Compressor A1	Check for any sign of damage to the paint and apply touch up paint as required.	
Compressor A1	Check lubricator box oil level (ARIEL ONLY)	
Compressor A1	Check oil make-up tank for sufficient supply (ARIEL ONLY)	
Compressor A1	Monitor lubricator cycle movement indicator for proper operation, repair as necessary (ARIEL ONLY)	
Compressor A1	Check lubricator box oil level (ARIEL ONLY)	
Compressor A1	Ambient temperature	
Compressor A1	Suction pressure	
Compressor A1	Oil pressure	
Compressor A1	Compressor hours (no decimals)	
Compressor A1	1st stage pressure	
Compressor A1	1st stage temperature	
Compressor A1	2nd stage pressure	
Compressor A1	2nd stage temperature	
Compressor A1	3rd stage pressure	
Compressor A1	3rd stage temperature	
Compressor A1	4th stage pressure	
Compressor A1	4th stage temperature	
Compressor A2	During operation, check/record/verify compressor performance data.	
Compressor A2	Visually inspect compressor hoses, tubing, piping, and valves for leaks and abnormalities.	
Compressor A2	Listen for any abnormal sounds (e.g., banging or hissing).	
Compressor A2	Check priority panel for proper operation, if applicable.	
Compressor A2	Check control gas regulator, adjust, look for frost/leaks.	
Compressor A2	Inspect pressure gauges for leaking glycerin	
Compressor A2	Drain all inter-stage scrubbers and record weight	
Compressor A2	Drain suction filter and record weight	
Compressor A2	Drain discharge filters and record weight	
Compressor A2	Drain recovery tank and record weight	





Work Order ID:

Date of Service:

Service Location: <SITE NAME>

Bill To Location: <CUSTOMER NAME>

<SITE ADDRESS>

Customer Asset	Question	Response
Compressor A2	Drain vent stack and record weight	
Compressor A2	Check intake/outlet air louver operation (if applicable). Adjust as necessary.	
Compressor A2	Check bolts, clamps, and nuts for tightness. Torque if necessary. Reference Torqueing Guide for Specification	
Compressor A2	Check and record frame oil pressure when at operating temperature. Compressor inlet oil temperature is 190°F (88°C) maximum. (it should be 50 to 60PSIG)	
Compressor A2	The frame oil level should be visible in the sight glass and approx. mid-level when running, if not, determine and correct cause. Do not overfill. (ARIEL ONLY)	
Compressor A2	Check packing vents for blowing gas, measure and record gas volume.	
Compressor A2	Wipe Down / Clean Compressor	
Compressor A2	Check for any sign of damage to the paint and apply touch up paint as required.	
Compressor A2	Check lubricator box oil level (ARIEL ONLY)	
Compressor A2	Check oil make-up tank for sufficient supply (ARIEL ONLY)	
Compressor A2	Monitor lubricator cycle movement indicator for proper operation, repair as necessary (ARIEL ONLY)	
Compressor A2	Check lubricator box oil level (ARIEL ONLY)	
Compressor A2	Ambient temperature	
Compressor A2	Suction pressure	
Compressor A2	Oil pressure	
Compressor A2	Compressor hours (no decimals)	
Compressor A2	1st stage pressure	
Compressor A2	1st stage temperature	
Compressor A2	2nd stage pressure	
Compressor A2	2nd stage temperature	
Compressor A2	3rd stage pressure	
Compressor A2	3rd stage temperature	
Compressor A2	4th stage pressure	
Compressor A2	4th stage temperature	
Compressor B1	During operation, check/record/verify compressor performance data.	
Compressor B1	Visually inspect compressor hoses, tubing, piping, and valves for leaks and abnormalities.	
Compressor B1	Listen for any abnormal sounds (e.g., banging or hissing).	
Compressor B1	Check priority panel for proper operation, if applicable.	
Compressor B1	Check control gas regulator, adjust, look for frost/leaks.	
Compressor B1	Inspect pressure gauges for leaking glycerin	
Compressor B1	Drain all inter-stage scrubbers and record weight	
Compressor B1	Drain suction filter and record weight	
Compressor B1	Drain discharge filters and record weight	



City of Porterville
Request for Proposal RFP No. 24/25-SR1982
CNG Fueling Station Maintenance Services





Work Order ID:

Date of Service:

Service Location: <SITE NAME>
<SITE ADDRESS>

Bill To Location: <CUSTOMER NAME>

Customer Asset	Question	Response
Compressor B1	Drain recovery tank and record weight	
Compressor B1	Drain vent stack and record weight	
Compressor B1	Check intake/outlet air louver operation (if applicable). Adjust as necessary.	
Compressor B1	Check bolts, clamps, and nuts for tightness. Torque if necessary. Reference Torqueing Guide for Specification	
Compressor B1	Check and record frame oil pressure when at operating temperature. Compressor inlet oil temperature is 190°F (88°C) maximum. (it should be 50 to 60PSIG)	
Compressor B1	The frame oil level should be visible in the sight glass and approx. mid-level when running, if not, determine and correct cause. Do not overfill. (ARIEL ONLY)	
Compressor B1	Check packing vents for blowing gas, measure and record gas volume.	
Compressor B1	Wipe Down / Clean Compressor	
Compressor B1	Check for any sign of damage to the paint and apply touch up paint as required.	
Compressor B1	Check lubricator box oil level (ARIEL ONLY)	
Compressor B1	Check oil make-up tank for sufficient supply (ARIEL ONLY)	
Compressor B1	Monitor lubricator cycle movement indicator for proper operation, repair as necessary (ARIEL ONLY)	
Compressor B1	Check lubricator box oil level (ARIEL ONLY)	
Compressor B1	Ambient temperature	
Compressor B1	Suction pressure	
Compressor B1	Oil pressure	
Compressor B1	Compressor hours (no decimals)	
Compressor B1	1st stage pressure	
Compressor B1	1st stage temperature	
Compressor B1	2nd stage pressure	
Compressor B1	2nd stage temperature	
Compressor B1	3rd stage pressure	
Compressor B1	3rd stage temperature	
Compressor B1	4th stage pressure	
Compressor B1	4th stage temperature	
Compressor B2	During operation, check/record/verify compressor performance data.	
Compressor B2	Visually inspect compressor hoses, tubing, piping, and valves for leaks and abnormalities.	
Compressor B2	Listen for any abnormal sounds (e.g., banging or hissing).	
Compressor B2	Check priority panel for proper operation, if applicable.	
Compressor B2	Check control gas regulator, adjust, look for frost/leaks.	
Compressor B2	Inspect pressure gauges for leaking glycerin	
Compressor B2	Drain all inter-stage scrubbers and record weight	
Compressor B2	Drain suction filter and record weight	





Work Order ID:

Date of Service:

Service Location: <SITE NAME>

Bill To Location: <CUSTOMER NAME>

<SITE ADDRESS>

Customer Asset	Question	Response
Compressor B2	Drain discharge filters and record weight	
Compressor B2	Drain recovery tank and record weight	
Compressor B2	Drain vent stack and record weight	
Compressor B2	Check intake/outlet air louver operation (if applicable). Adjust as necessary.	
Compressor B2	Check bolts, clamps, and nuts for tightness. Torque if necessary. Reference Torqueing Guide for Specification	
Compressor B2	Check and record frame oil pressure when at operating temperature. Compressor inlet oil temperature is 190°F (88°C) maximum. (it should be 50 to 60PSIG)	
Compressor B2	The frame oil level should be visible in the sight glass and approx. mid-level when running, if not, determine and correct cause. Do not overfill. (ARIEL ONLY)	
Compressor B2	Check packing vents for blowing gas, measure and record gas volume.	
Compressor B2	Wipe Down / Clean Compressor	
Compressor B2	Check for any sign of damage to the paint and apply touch up paint as required.	
Compressor B2	Check lubricator box oil level (ARIEL ONLY)	
Compressor B2	Check oil make-up tank for sufficient supply (ARIEL ONLY)	
Compressor B2	Monitor lubricator cycle movement indicator for proper operation, repair as necessary (ARIEL ONLY)	
Compressor B2	Check lubricator box oil level (ARIEL ONLY)	
Compressor B2	Ambient temperature	
Compressor B2	Suction pressure	
Compressor B2	Oil pressure	
Compressor B2	Compressor hours (no decimals)	
Compressor B2	1st stage pressure	
Compressor B2	1st stage temperature	
Compressor B2	2nd stage pressure	
Compressor B2	2nd stage temperature	
Compressor B2	3rd stage pressure	
Compressor B2	3rd stage temperature	
Compressor B2	4th stage pressure	
Compressor B2	4th stage temperature	
Compressor B2	5th stage pressure	
Compressor B2	5th stage temperature	
Dryer 01	Check all piping, tubing and vessels for leaks	
Dryer 01	Drain pre-filter	
Dryer 01	Drain blower housing	
Dryer 01	Drain sump	



Exhibit A
FTA Terms and Conditions

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

Contractor shall comply with the following FTA requirements. For purposes of these clauses, the AGENCY is the City of Porterville (FTA recipient) that is entering the Contract with Contractor.

1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. NOTIFICATION TO FTA.

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its subagreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

- C. **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY,

3. PROGRAM FRAUD & FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS.

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this Project. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

- C. Contractor shall include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS, REPORTS, and SITES

- A. **Record Retention.** Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** Contractor shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, FTA, the Agency, and their duly authorized representatives to inspect and audit records and information, including such records and information the AGENCY or Contractor may regard as confidential or proprietary related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal laws, regulations, requirements, policies, procedures, guidance, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between the City of Porterville and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6. CIVIL RIGHTS

The AGENCY must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless an AGENCY or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute,

FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

A. Nondiscrimination in Federal Public Transportation Programs.

1. Contractor must prohibit: **(a)** discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age; **(b)** exclusion from participation in employment or a of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and **(d)** discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
2. Contractor must follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

B. Nondiscrimination – Title VI of the Civil Rights Act.

1. Contractor must prohibit discrimination based on race, color, or national origin;
2. Contractor must comply with: **(a)** Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; **(b)** U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and **(c)** Federal transit law, specifically 49 U.S.C. § 5332; and
3. Contractor must follow: **(a)** the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; **(b)** U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and **(c)** all other applicable federal guidance that may be issued.

C. Equal Employment Opportunity.

1. Federal Requirements and Guidance. Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor must also comply with: **(a)** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; **(b)** Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; **(c)** Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; **(d)** federal

transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients.” Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

2. Affirmative Action. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), Contractor must take affirmative action that includes, but is not limited to: (a) recruitment advertising, recruitment, and employment; (b) rates of pay and other forms of compensation; (c) selection for training, including apprenticeship, and upgrading; and (d) transfers, demotions, layoffs, and terminations.
3. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.
5. Indian Tribe. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.”
6. Equal Employment Opportunity for Construction Activities. When undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), Contractor must comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60 (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 42 U.S.C. § 2000e note).
7. Access for Elderly Individuals and Individuals with Disabilities. Contractor agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barrier Act of 1968, as amended, 42 U.S.C. § 4151, et seq. In addition, Contractor agrees to comply with applicable Federal implementing regulations.

7. INCORPORATION OF FTA TERMS

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the AGENCY that would cause the AGENCY to be in violation of the FTA terms and conditions. Contractor shall include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

8. FREE SPEECH & RELIGIOUS LIBERTY

All Federal funding must be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements, including but not limited to those prohibiting discrimination and protecting free speech, religious liberty, public welfare, and the environment.

9. FEDERAL TERMINATION RIGHTS

The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.

10. DEBARMENT, SUSPENSION, INELIGIBILITY, & VOLUNTARY EXCLUSION

[This requirement does not apply to contracts and subcontracts under \$25,000.]

- A. Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- B. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally-funded contract (which includes review of SAM at sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200) and are not presently declared by any Federal department or AGENCY to be: (1) debarred from participation in any federally-assisted Award; (2) suspended from participation in any

federally-assisted Award; (3) proposed for debarment from participation in any federally-assisted Award; (4) declared ineligible to participate in any federally-assisted Award; (5) voluntarily excluded from participation in any federally-assisted Award; or (6) disqualified from participation in any federally-assisted Award.

- C. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that Contractor available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor shall comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- D. Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 CFR 180.220 and 1200.220) with any “third party participant” (as defined in Section 1 of FTA’s Master Agreement (Version 31, dated May 2, 2024), as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. Part 1200).

11. TERMINATION

The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1F, Chapter IV, paragraph 2.b.(6)(b)4 – Termination.

12. VIOLATION & BREACH OF CONTRACT

[These requirements are not applicable to contracts and subcontracts under the simplified acquisition threshold (currently set at \$250,000).]

Unless otherwise provided for by the AGENCY, the following provisions shall apply:

- A. **Dispute Resolution.** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY. This decision shall be final and conclusive unless within

ten calendar days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the authorized representative of AGENCY. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of AGENCY shall be binding upon Contractor, and Contractor shall abide by the decision.

- B. **Performance During Disputes.** Notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an California Court of competent jurisdiction.
- C. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

13. LOBBYING RESTRICTIONS

[These requirements do not apply to contracts and subcontracts under \$100,000.]

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the AGENCY.

14. CARGO PREFERENCE (USE OF U.S.-FLAG VESSELS)

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381);

- B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the AGENCY (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- C. Contractor shall include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. FLY AMERICA

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation.]

- A. As used in this clause: **(1) “international air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States; **(2) “United States”** means the 50 States, the District of Columbia, and outlying areas; and **(3) “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- C. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. If Contractor selects a carrier other than a U.S.-flag air carrier for international involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- E. Contractor shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

16. EMPLOYEE PROTECTIONS

A. Prevailing Wage & Anti-Kickback

[These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.]

1. For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
2. In addition, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Contract Work Hours/Safety Standards for Awards Involving Construction

[These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
2. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
3. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
4. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

C. Contract Work Hours/Safety Standards for Awards Not Involving Construction

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

1. Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR part 5.
2. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
3. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
4. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

[These requirements apply only to contracts for the construction of new buildings or additions to existing buildings.]

Contractor shall design and construct any new building or addition to an existing building in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations (49 CFR part 41) and will certify its compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. VETERANS EMPLOYMENT

[These requirements apply only to capital projects. See 49 U.S.C. § 5302(3).]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

19. BONDING

[These requirements are applicable to all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold (currently set at \$250,000). See FTA Circular C 4220.1F for specific bonding requirements.]

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all of Contractor's obligations under such contract.
- C. A payment bond on the part of Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

[These requirements apply only to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be a transit operator.]

Contractor shall comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL

Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.

- B. **Special Warranty.** If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. **Special Arrangements.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL Letter.
- D. **Flow Down.** Contractor shall include the substance of this clause in each subcontract that may involve operating public transit services.

21. CHARTER SERVICE

[These requirements apply to contracts for operating public transportation service.]

- A. Contractor shall comply with 49 U.S.C. 5323(d), (g), and (r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: (1) federal transit laws, specifically 49 U.S.C. § 5323(d); (2) FTA regulations, "Charter Service," 49 CFR part 604; (3) any other federal Charter Service regulations; or (4) Federal guidance, except as FTA determines otherwise in writing.
- B. If Contractor engages in a pattern of violations of FTA's Charter Service regulations, then FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: (1) barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from

receiving federal assistance from FTA; (2) withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or (3) any other appropriate remedy that may apply.

- C. Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

22. SCHOOL BUS OPERATIONS

[These requirements apply to contracts for operating public transportation service.]

Contractor shall comply with 49 U.S.C. 5323(f) and (g), and 49 CFR part 605, and not engage in school bus operations using federally-funded equipment or facilities in competition with private operators of school buses, except as permitted under: (A) federal transit laws, specifically 49 U.S.C. § 5323(f); (B) FTA regulations, "School Bus Operations," 49 CFR part 605; (C) any other Federal School Bus regulations; or (D) federal guidance, except as FTA determines otherwise in writing. If Contractor violates these school bus requirements, then FTA may bar Contractor from receiving Federal assistance for public transportation or require Contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally-funded equipment, vehicles, or facilities. Contractor should include the substance of this clause in each subcontract or purchase under this Contract that may operate public transportation services.

23. MOTOR CARRIER SAFETY

[These requirements apply to contracts for operating bus operation service.]

- A. **Financial Responsibility.** Contractor shall comply with the economic and insurance registration requirements of: (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if Contractor is: (a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and (2) provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- B. **U.S. FMCSA Requirements.** Contractor shall comply with: (1) safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and (2) driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S.

FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

24. SAFE OPERATIONS OF MOTOR VEHICLES

- A. **Seat Belt Use.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or AGENCY.
- B. **Distracted Driving.** Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

25. CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

[These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).]

- A. **Definitions.** As used in this clause: (1) "driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise (note: "driving" does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary); and (2) "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication (note: "text messaging" does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park).
- B. **Executive Order.** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009. Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned/rented vehicles, Government-owned vehicles, and privately-owned

vehicles when on official Government business or when performing any work for or on behalf of the Government. Contractor is also encouraged to conduct initiatives in a manner commensurate with the size of the business, such as: (1) establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and (2) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- C. **Subcontracts.** Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

26. SUBSTANCE ABUSE (DRUG & ALCOHOL TESTING)

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 CFR Part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Porterville, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and 49 CFR part 40 and review the testing process.
- B. Contractor shall also submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program. Further, Contractor shall certify annually its compliance with parts 655 and 40 and to submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to Transit Compliance Officer, City of Porterville Transportation Department, 291 N. Main St., Porterville, CA 93257. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- C. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

27. BUY AMERICA

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, manufactured goods, or rolling stock.]

- A. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products

used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. Contractor must submit to AGENCY the appropriate Buy America certification with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

- B. Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184.
- C. Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184 shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”

28. PROHIBITED TELECOMMUNICATIONS & SURVEILLANCE SERVICES & EQUIPMENT

The AGENCY is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: **(A)** telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); **(B)** video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; **(C)** telecommunications or video surveillance services provided by such entities or using such equipment; and **(D)** 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.

29. AIR POLLUTION & FUEL ECONOMY

[These requirements apply to contracts for the purchase of rolling stock.]

The Contractor agrees to comply with applicable Federal air pollution control and fuel economy regulations, such as: EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

30. ROLLING STOCK LIMITATIONS

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor and its subcontractors must comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u), prohibiting the procurement of rolling stock from specified manufacturers for public transportation use.

31. PRE-AWARD & POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

[These requirements apply to contracts for the purchase of rolling stock.]

Contractor shall comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR part 663. Contractor shall comply with the Buy America certification(s) submitted with its offer. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

32. BUS TESTING

[These requirements apply to contracts for the purchase/lease of any bus model that is new or has any major change in configuration/components to be acquired/leased.]

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the grantee.

33. ENVIRONMENTAL PROTECTIONS

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

2. National Environmental Policy Act.

1. Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: **(a)** federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; **(b)** the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42

U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to Contractor.

2. Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
3. **Environmental Justice.** Contractor shall promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order; (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997; and (3) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
4. **Other Environmental Federal Laws.** Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."
5. **Use of Certain Public Lands.** Contractor shall comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
6. **Historic Preservation.** Contractor shall comply with: (1) U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic

Places; (2) federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108; (3) the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq.; (4) U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and (5) other federal requirements and federal guidance to avoid or mitigate adverse effects on historic properties.

7. **Indian Sacred Sites.** Contractor shall facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

34. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

[These requirements do not apply to contracts and subcontracts under \$150,000.]

Contractor shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).

35. ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.).

36. RECYCLED PRODUCTS (SOLID WASTES)

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000. See 40 C.F.R part 247 for federal designation of items.]

Contractor shall provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (B) procuring solid waste management services in a manner that

maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

37. INTELLECTUAL PROPERTY/PATENT RIGHTS & RIGHTS IN DATA

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- B. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes”: (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by the FTA. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- C. Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject

data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- D. Unless prohibited by state law, upon request by the Federal Government, Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- E. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- F. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

38. COMPLIANCE WITH NATIONAL ITS ARCHITECTURE POLICY

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

39. NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting

system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

40. TRAFFICKING IN PERSONS

Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

41. PRIVACY ACT

Contractor agrees to: (A) comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and (B) include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

42. SECTION 508 COMPLIANCE

Any reports or information that will be provided to DOT or any other Federal agency must comply with Section 508 of the Rehabilitation Act of 1973.

43. DBE REQUIREMENTS

The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Porterville DBE Program is managed and administered by the City's Transportation Department. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

A. General Requirements

1. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, Joint Venture, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
2. **DBE Participation.** For this solicitation, the Agency *has not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.
3. **Small Business Participation.** The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).
4. **DBE Certification.** Only firms (1) certified by the Agency or another CAUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from race- and gender-neutral (RGN) measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.
5. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and

administration of USDOT-assisted contracts. Failure by the contractor 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 City of Porterville 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 the contractor from future bidding as non-responsible.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

6. **Subcontracts.** If subcontracts will be let under this Contract, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Update and Approval of FY 2023 and FY 2024-25 Transit Programs and Transportation Development Act (TDA) Claims

SOURCE: Public Works

COMMENT: Staff has prepared an update on the Fiscal Year (FY) 2023 and FY 2024-25 transit programs and related TDA claims to reflect adjustments in funding allocations and project priorities. This includes rescinding the previous FY 2023 TDA claim and updating the FY 2024-25 Program of Projects.

FY 2023 TDA Claim

For Fiscal Year (FY) 2023-24, the City of Porterville received an estimated allocation of \$991,292.10 in STA funds and \$3,567,034.28 in LTF funds. On August 6, 2024, the City Council approved Resolution No. 54-2024, authorizing TCRTA to submit a TDA claim for \$991,292.10 in STA funds and \$603,283 in LTF funds, with the remaining \$2,963,751.28 in LTF funds allocated directly to the City (detailed in the attached staff report from August 6, 2024).

Since the initial approval, updates to both the estimated allocation and the FY 23/24 TCRTA budget have impacted the LTF allocations, necessitating a revised claim. The updated FY 2023-24 TDA claim does not change the amount of STA funds claimed by TCRTA but increases the LTF allocation to TCRTA from \$603,283 to \$1,251,298.28. This adjustment results in a corresponding decrease in the amount of LTF funds claimed by the City. The revised allocations are as follows:

- TCRTA: \$991,292.10 in STA funds (unchanged) and \$1,251,298.28 in LTF funds.
- City of Porterville: \$2,247,817.92 in remaining LTF funds.

These adjustments align with TCAG's 2024 TDA Claims Manual and ensure compliance with current transit budget requirements.

FY 2024-25 Transit Program of Projects

On August 6, 2024, the City Council approved the FY 2024-2025 Transit Division Budget and Program of Projects, outlining allocations for projects funded by the Federal Transit Administration (FTA) Section

5307 and 5339, with TDA funds serving as local matches. This Program of Projects, required by the FTA, identifies fiscally constrained projects for the current fiscal year.

Since the initial approval, updates to available TDA funding and revised project proposals have led to minor adjustments in project allocations to better align with current service and infrastructure priorities. A summary of key changes is as follows:

- Revenue Vehicles: Quantity reductions have been made to align more efficiently with current service requirements.
- Facility Improvements (Administration & Transit Center): Funding has been adjusted based on recent assessments to support increased usage and enhance operational efficiency.
- Charging Station Infrastructure: Funding has been revised to include support for new solar-powered charging stations and the replacement of existing stations.
- Fare Collection System Upgrades: Adjustments have been made to leverage the regional fare collection system, reducing the City's overall investment.

If approved, staff will submit the updated Program of Projects to the Tulare County Association of Governments (TCAG) for inclusion in a future Federal Transportation Improvement Program (FTIP) amendment. This administrative update process typically takes a few weeks.

RECOMMENDATION: That the City Council:

1. Rescind Resolution No. 54-2024 from August 6, 2024, and approve the updated FY 2023 TDA Claim; and
2. Approve the updated allocations for the FY 2024-25 Transit Program of Projects; and
3. Direct staff to implement these changes and ensure compliance with funding and program requirements.

ATTACHMENTS:

1. August 6, 2024 Staff Report
2. Resolution No. 54-2024
3. Draft Resolution
4. Updated Program of Projects_11.6.24

Appropriated/Funded:

Review By:

Department Director:

Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – AUGUST 6, 2024

SUBJECT: Approving a Resolution for FY 2023 Transportation Development Act (TDA) Claims

SOURCE: Public Works

COMMENT: The Transportation Development Act (TDA) was passed in 1971 providing transit funding for local agencies from two sources: The Local Transportation Fund (LTF), derived through a 1/4 cent general sales tax collected statewide; and the State Transit Assistance (STA) Fund, derived from a statewide sales tax on gasoline and diesel fuels and augmented by funds received via Senate Bill 1 (SB 1).

The Tulare County Association of Governments (TCAG) approves the apportionments for transit services for each fiscal year (FY), accounting for transfer agreements between agencies. TCAG reviews the claims and instructs the County Auditor on the payment of funds to each respective agency. Many requirements exist for approving claims, including items such as an adopted transit budget, farebox recovery ratios, vehicle safety inspection reports, and compliance with fiscal and performance audits. In addition, the 2024 update to the TDA Claims Manual requires agencies to: 1) submit a resolution for the proposed claim or a resolution of concurrence from the agency contributing to the proposed claim; 2) submit a draft Short Range Transit Plan (SRTP) by July 1, 2025; and 3) fully utilize available Federal Transit Administration (FTA) Section 5307 and STA funds before LTF can be used as a local match. Once transit services have been fully funded, the remaining LTF balance may be transferred to street and road projects.

For FY 2023, TCAG apportioned the City \$991,292.10 in STA funds and \$3,567,034.28 in LTF funds. In addition, during FY 2023, the City was a member of the Tulare County Regional Transit Agency (TCRTA) and per the TCRTA Joint Powers Agreement, the member agencies may authorize TCRTA to submit claims for its member's allocated TDA funds if unanimously approved by the directors present and voting at a meeting.

It is staff's recommendation that, based on the adopted FY 2023 TCRTA Transit Budget, the City Council authorize TCRTA to submit a FY 2023 TDA claim in the amounts of \$991,292.10 in STA funds and \$603,283 in LTF funds. It is also staff's recommendation that the City Council authorize staff to submit an LTF claim for the remaining balance of \$2,963,751.28, subject to the 2024 TCAG TDA Claims Manual.

RECOMMENDATION: That the City Council adopted the draft resolution authorizing:
1. The Tulare County Regional Transit Agency to submit a FY 2023-24 TDA claim in the amounts of \$991,292.10 in STA funds and \$603,283 in LTF funds based on their adopted FY 2023 budget; and
2. The City of Porterville to submit a FY 2023-24 TDA claim for the remaining balance of LTF funds in the amount of \$2,963,751.28.

ATTACHMENTS: 1. Draft Resolution

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager

RESOLUTION NO. 54 -2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
FOR FISCAL YEAR 2023-24 TRANSPORTATION DEVELOPMENT ACT CLAIM
BY THE CITY OF PORTERVILLE AND CONCURRENCE TO A CLAIM BY
THE TULARE COUNTY REGIONAL TRANSIT AGENCY**

WHEREAS, pursuant to Government Code Section 66500 et seq., the Tulare County Association of Governments ("TCAG") is the regional transportation planning agency for Tulare County; and

WHEREAS, the Mills-Alquist-Deddeh Act ("Transportation Development Act" or "TDA"), Public Utilities Code Section 99200 et seq., makes certain retail sales tax revenues available to eligible claimants for public transportation projects and purposes; and

WHEREAS, TCAG is responsible for the allocation of TDA funds to eligible claimants within the Tulare County region; and

WHEREAS, the City of Porterville is an eligible claimant of TDA funds; and

WHEREAS, for the fiscal year 2023-24 the City of Porterville is allocated \$991,292.10 in State Transit Assistance ("STA") funds and \$3,567,034.28 in Local Transportation Funds ("LTF"); and

WHEREAS, during fiscal year 2023-24, the City of Porterville was a member agency of the Tulare County Regional Transit Agency ("TCRTA"); and

WHEREAS, the TCRTA Joint Powers Agreement provides the member agencies may authorize TCRTA to submit claims for its member's allocated TDA funds if unanimously approved by the directors present and voting at a meeting; and

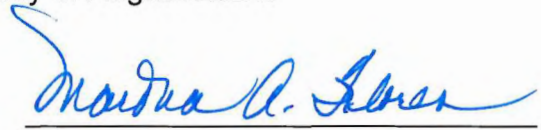
WHEREAS, the Tulare County Regional Transit Agency's fiscal year 2023-24 transit budget, as amended, lists the amounts of and purposes for the fiscal year 2023-24 TDA allocations requested.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Porterville City Council does hereby authorize a FY 2023-24 TDA claim by the Tulare County Regional Transit Agency in the amounts of \$991,292.19 in State Transit Assistance and \$603,283 in Local Transportation funds, subject to the TCAG 2024 TDA Claims Manual; and

2. That the Porterville City Council does hereby approve a FY 2023-24 TDA claim by the City of Porterville for the remaining \$2,963,751.28 in Local Transportation funds, subject to the TCAG 2024 TDA Claims Manual; and

PASSED, APPROVED AND ADOPTED this 6th day of August 2024.



Martha A. Flores, Mayor

ATTEST:

Patrice Hildreth, City Clerk

By: 

Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk

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

I, PATRICE HILDRETH, 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 6th day of August, 2024.

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:					

PATRICE HILDRETH, City Clerk



By:

Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk

RESOLUTION NO. ____-2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
FOR FISCAL YEAR 2023-24 TRANSPORTATION DEVELOPMENT ACT CLAIM
BY THE CITY OF PORTERVILLE AND CONCURRENCE TO A CLAIM BY
THE TULARE COUNTY REGIONAL TRANSIT AGENCY**

WHEREAS, pursuant to Government Code Section 66500 et seq., the Tulare County Association of Governments ("TCAG") is the regional transportation planning agency for Tulare County; and

WHEREAS, the Mills-Alquist-Deddeh Act ("Transportation Development Act" or "TDA"), Public Utilities Code Section 99200 et seq., makes certain retail sales tax revenues available to eligible claimants for public transportation projects and purposes; and

WHEREAS, TCAG is responsible for the allocation of TDA funds to eligible claimants within the Tulare County region; and

WHEREAS, the City of Porterville is an eligible claimant of TDA funds; and

WHEREAS, for the fiscal year 2023-24 the City of Porterville is allocated an estimated \$991,292.10 in State Transit Assistance ("STA") funds and \$3,499,116.20 in Local Transportation Funds ("LTF"); and

WHEREAS, during fiscal year 2023-24, the City of Porterville was a member agency of the Tulare County Regional Transit Agency ("TCRTA"); and

WHEREAS, the TCRTA Joint Powers Agreement provides the member agencies may authorize TCRTA to submit claims for its member's allocated TDA funds if unanimously approved by the directors present and voting at a meeting; and

WHEREAS, the Tulare County Regional Transit Agency's fiscal year 2023-24 transit budget, as amended, lists the amounts of and purposes for the fiscal year 2023-24 TDA allocations requested.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Porterville City Council does hereby authorize a FY 2023-24 TDA claim by the Tulare County Regional Transit Agency in the amounts of \$991,292.10 in State Transit Assistance and \$1,570,607.28 in Local Transportation funds, subject to the TCAG 2024 TDA Claims Manual; and

2. That the Porterville City Council does hereby approve a FY 2023-24 TDA claim by the City of Porterville for the remaining \$1,619,628.72 in Local Transportation funds, subject to the TCAG 2024 TDA Claims Manual; and

PASSED, APPROVED AND ADOPTED this 19th day of November 2024.

Martha A. Flores, Mayor

ATTEST:

Patrice Hildreth, City Clerk

By: _____
Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk

2024-2025
CITY OF PORTERVILLE
FTA FUNDED PROGRAM OF PROJECTS

				Amounts in \$1,000's					
	Agency	Project Title	Project Description	Fund Source	Funds Programmed "Prior"	FY 22/23	FY 23/24	FY 24/25	FY 25/26
(CTIPS ID: 215-0000-0727)	TCRTA	City of Porterville Operating Assistance	Transit operating assistance for Porterville Urbanized Area using FTA 5307	FTA 5307	\$0	\$0	\$2,241	\$0	\$0
				LTF	\$0	\$0	\$2,241	\$0	\$0
(CTIPS ID: 215-0000-0727)	TCRTA	City of Porterville Preventative Maintenance	Preventative Maintenance activities for Porterville Urbanized Area using FTA 5307	FTA 5307	\$0	\$0	\$1,000	\$0	\$0
				LTF	\$0	\$0	\$319	\$0	\$0
(CTIPS ID: 215-0000-0727)	Porterville	City of Porterville Operating Assistance	Transit operating assistance for Porterville Urbanized Area using FTA 5307	FTA 5307	\$0	\$0	\$0	\$3,000	\$3,000
				LTF	\$0	\$0	\$0	\$3,000	\$3,000
(CTIPS ID: 215-0000-0727)	Porterville	City of Porterville Preventative Maintenance	Preventative Maintenance activities for Porterville Urbanized Area using FTA 5307	FTA 5307	\$0	\$0	\$0	\$1,200	\$1,200
				LTF	\$0	\$0	\$0	\$300	\$300
(CTIPS ID: 215-0000-0796)	Porterville	Fuel System Upgrades	Purchase fuel system software and equipment for Porterville City Transit Bus Yard	FTA 5307	\$0	\$0	\$0	\$292	\$0
				LTF	\$0	\$0	\$0	\$73	\$0
(CTIPS ID: 215-0000-0796)	Porterville	Fencing and security hardware purchase	Replace and upgrade existing security fencing at bus yard	FTA 5307	\$0	\$0	\$0	\$120	\$0
				LTF	\$0	\$0	\$0	\$30	\$0
New	Porterville	Non-Revenue Support Vehicles	Purchase Non-Revenue Support Vehicles	FTA 5307	\$0	\$0	\$0	\$340	\$0
				LTF	\$0	\$0	\$0	\$85	\$0
(CTIPS ID: 215-0000-0741)	Porterville	Replacement Revenue Vehicles	Purchase Replacement Revenue Vehicles for Demand Response	FTA 5339	\$0	\$0	\$0	\$344	\$0
				LTF	\$0	\$0	\$0	\$86	\$0
New	Porterville	Replacement Revenue Vehicles	Purchase Replacement Revenue Vehicles For Fixed Route	FTA 5307	\$0	\$0	\$0	\$5,440	\$0
				LTF	\$0	\$0	\$0	\$1,360	\$0
(CTIPS ID: 215-0000-0797)	Porterville	Porterville Renewable Energy Infrastructure	Purchase and installation of new and replacement charging station infrastructure	FTA 5307	\$0	\$0	\$0	\$1,040	\$0
				LTF	\$0	\$0	\$0	\$260	\$0
(CTIPS ID: 215-0000-0796)	Porterville	Bus Stop Improvements	Purchase and install various bus stop amenities	FTA 5307	\$0	\$0	\$0	\$800	\$0
				LTF	\$0	\$0	\$0	\$200	\$0
New	Porterville	Fare Collection System Improvements	Purchase and install various fare collection system software and equipment	FTA 5307	\$0	\$0	\$0	\$160	\$0
				LTF	\$0	\$0	\$0	\$40	\$0
New	Porterville	Facility Improvements	Design and construct various facility improvements at the administration and transit center.	FTA 5307	\$0	\$0	\$0	\$400	\$0
				LTF	\$0	\$0	\$0	\$100	\$0

* Red font color represents changes



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Cooperative Agreement with Tulare County Association of Governments (TCAG) for SB 125 Program Funding

SOURCE: Public Works

COMMENT: The California State Budget Act of 2023 established the SB 125 Program, a Formula-Based Transit and Intercity Rail Capital Program aimed at funding zero-emission transit capital projects. The Tulare County Association of Governments (TCAG), as the Regional Transportation Planning Agency for Tulare County, administers the SB 125 Program locally.

The attached Cooperative Agreement between TCAG and the City provides the framework for fund disbursement, project compliance, and reporting, ensuring adherence to the SB 125 Program Guidelines. Key components include:

1. Project Scope and Compliance: The City is responsible for managing project phases, ensuring compliance with SB 125 Program requirements, and submitting progress reports and invoices in accordance with TCAG's schedule.
2. Funding and Reimbursement: TCAG will reimburse the City for eligible project costs upon approval, as long as the project aligns with the established scope and guidelines.
3. Project Amendments: Any project scope changes require TCAG's approval, and the City must comply with TCAG's amendment process for continued funding eligibility.
4. Indemnification and Audit: Both TCAG and the City agree to mutual indemnification clauses, with TCAG retaining audit rights for up to four years post-project completion.

Through this agreement, the City of Porterville will secure its allocation of SB 125 Program funds designated by TCAG to develop transit capital improvements, such as the Zero-Emission Maintenance Facility. TCAG has allocated \$11,000,000 to the City for this project.

RECOMMENDATION: That the City Council:

1. Approve the attached Cooperative Agreement with the Tulare County Association of Governments (TCAG) for SB 125 Program funding; and
2. Authorize the City Manager or designee to execute the agreement on behalf of the City.

- ATTACHMENTS:
1. SB 125 Program Cooperative Agreement Template
 2. SB 125 Supplement to Cooperative Agreement Template
 3. TCAG SB 125 Agenda Item
 4. SB125 Project List

Appropriated/Funded:

Review By:

Department Director:
Richard Tree, Director of Transportation

Final Approver: Patrice Hildreth, City Manager

SB 125 PROGRAM COOPERATIVE AGREEMENT

THIS SB 125 PROGRAM COOPERATIVE AGREEMENT ("Agreement") is made and entered into on _____, by and between the [CITY OF PORTERVILLE / CITY OF VISALIA / TULARE COUNTY REGIONAL TRANSIT AGENCY] ("SPONSOR") and the TULARE COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Regional Transportation Planning Agency for Tulare County ("TCAG"). SPONSOR and TCAG are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

RECITALS

WHEREAS, TCAG and SPONSOR desire to enter into an Agreement for funding of transit capital improvements and/or operational costs in Tulare County pursuant to the authority provided by the State of California's Budget Act of 2023 SB 125 Program Formula-Based Transit and Intercity Rail Capital Program & Zero Emission Transit Capital Program ("SB 125 Program"); and

WHEREAS, SPONSOR desires to receive SB 125 Program funding from TCAG for transit capital improvement projects and/or operational costs ("Projects") to be developed and/or identified by SPONSOR; and,

WHEREAS, TCAG is authorized under the SB 125 Program to disburse SB 125 Program funds to SPONSOR in accordance with the "Final Guidelines" promulgated as of September 29, 2023 for the SB 125 Program by the California State Transportation Agency, as those "Final Guidelines" may be amended or supplemented from time-to-time (the "SB 125 Program Guidelines").

NOW, THEREFORE, the Parties represent, covenant and agree as follows:

AGREEMENT

This Agreement shall have no force or effect with respect to a specific Project unless and until a project-specific Program Supplement to this Agreement (a "Program Supplement") has been fully executed by both TCAG and SPONSOR.

SECTION I Covenants of SPONSOR

1.1 Compliance with SB 125 Program Requirements. SPONSOR agrees to abide by the terms and conditions of TCAG as set forth herein for the receipt of SB 125 Program funds and to comply with the SB 125 Program Guidelines (**Appendix**); and TCAG'S adopted SB 125 Program Policies and Procedures, if any, as well as any subsequent amendments or updates thereto.

1.2. Project Application.

1.2a. **Transit Capital Improvement and/or Operational Costs Projects** - The complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement SB 125 Program funds, and the anticipated timing for release of SB 125 Program funds shall be specified in SPONSOR'S application for SB 125 Program funds and approved by TCAG. Such an application is in addition to any annual transit expansion or equivalent plan or application that SPONSOR may be required to submit to TCAG in order to receive Measure R or other transit planning, operational, or capital improvement funds.

1.3. **Project Scope.** A Project scope of work or any change to such may not be implemented until it has been approved by TCAG in accordance with the SB 125 Program Guidelines.

1.4. **Eligible Reimbursement Costs.** Eligible reimbursement costs shall be costs as specified in the SB 125 Program Guidelines or as may be approved from time to time by TCAG pursuant to Section 1.2. In no event shall expenses incurred prior to the execution of this Agreement be considered eligible reimbursement costs.

1.5. **SB 125 Program Percentage Share Defined.** For this Agreement, the SB 125 Program percentage share of eligible costs shall be as set forth in the approved application for the specific Project.

1.6. **Invoices and Progress Reports.** Starting one month after the execution of this Agreement, SPONSOR shall provide TCAG with quarterly progress reports concerning the Project. SPONSOR shall provide invoices no less than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:

1.6.a. **SPONSOR'S Staff Expenses.** SPONSOR may include in the invoice direct staff expenses for the eligible costs of the Project.

1.6.b. **Copies of Consultant Invoices.** SPONSOR shall provide TCAG with one (1) copy of all invoices submitted to SPONSOR by every consultant, subconsultant, contractor, or subcontractor performing work related to the Project.

1.6.c. **Progress Reports.** The quarterly progress reports shall include a brief description of the status of the Project and the work completed to date. This summary may be included on the invoices submitted to TCAG or be attached to those invoices.

1.6.d. **Deadline to Submit Reimbursement Requests.** All invoices and progress reports shall be submitted to TCAG on or before 5:00 p.m. on the tenth (10th) calendar day of the month in which SPONSOR requests reimbursement payments. TCAG shall issue reimbursement payments to SPONSOR on or before the last day of the month for all timely submittals.

1.6.e. **Late Submittals.** If SPONSOR fails to submit documents to TCAG as set forth in Section 1.5.d, above, then TCAG shall provide reimbursement payments for late submittals in the following calendar month.

1.7. Use of Funds. SPONSOR shall use SB 125 Program funds consistent with the Project scope of work approved by TCAG pursuant to Section 1.2.

1.8. Submittal of Documents. SPONSOR shall provide copies to TCAG of all executed contracts which relate to the Project scope approved by TCAG pursuant to Section 1.2. SPONSOR shall retain records pertaining to the Project for a four (4) year period following completion of the Project.

1.9. Completion of Project. SPONSOR shall be responsible for the timely completion of construction and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work.

1.9.a. Letter of Project Completion. SPONSOR shall provide TCAG with a letter of Project completion which includes final cost, revenues, and schedule of activities. This letter shall accompany the final invoice for payment from SPONSOR to provide notice of Project account closing by TCAG.

1.10. Provision of Signs. SPONSOR shall install SB 125 Program signs approved and/or required by TCAG. SB 125 Program Signs shall be posted at locations agreed upon by TCAG and SPONSOR.

1.11. Cost-Savings and Excess Costs.

1.10.a. Definition of Cost Savings. After a Project has been accepted by SPONSOR as complete, any positive difference between the total Project cost, as approved by TCAG pursuant to Section 1.2, and the total amount invoiced to TCAG shall be considered Project cost savings.

1.11.b. Cost Savings. If, according to the most recently amended SB 125 Program Guidelines, the Projects are not segments of a larger project, or if all other segments of the larger project have been completed, then TCAG shall allocate the SB 125 Program share according to the Adopted Policies and Procedures, if any.

1.11.c. Segmented Projects. If, according to the most recently amended SB 125 Program Guidelines, the Project is a segment of a larger project and other segments have not been completed, then TCAG shall allocate the SB 125 Program share (as specified in Section 1.4) of these cost savings to the uncompleted segment(s) of the larger project.

1.11.d. Excess Costs: If the actual total Project costs exceed the estimate approved by TCAG, then this amount will be considered an excess cost.

1.11.e.Reconciliation of Excess Costs: If the costs to complete the Project exceed the total amount of funds programmed, SPONSOR will be fiscally responsible for the full amount of excess costs associated with SPONSOR'S Project, unless otherwise agreed by the Parties pursuant to Section 2.4.

1.12. Provision of Groundbreaking and Ribbon Cutting Ceremonies. SPONSOR shall

be responsible for groundbreaking ceremonies and ribbon cutting ceremonies, if any, related to their Project(s) and as determined necessary by TCAG and SPONSOR. SPONSOR may contract either or both ceremonies through private consultants. Any such ceremonies shall be coordinated with the Public Relations Officer of TCAG. The costs of all ceremonies will be an expense of the Project.

SECTION II

Covenants of TCAG

2.1 SB 125 Program Funds. TCAG agrees to disburse SB 125 Program funds for the costs of SPONSOR'S Project(s) according to the terms and conditions set forth herein, and to comply with the SB 125 Program Guidelines and; and TCAG'S adopted SB 125 Program Policies and Procedures, if any, as well as any subsequent amendments or updates.

2.2. Reimbursement Payments. TCAG shall make reimbursement payments to SPONSOR for eligible Project costs as specified in the SB 125 Program Guidelines and subsequent updates of the SB 125 Program Guidelines. To receive monthly reimbursement payments for work completed on the Project, SPONSOR shall comply with the following reimbursement procedures:

2.2.a. Ineligible Costs. The TCAG reserves the right to adjust current or future reimbursement payments to SPONSOR if an invoice includes ineligible costs.

2.2.b. Reimbursement Amount. The amount of reimbursement payments to SPONSOR shall be made pursuant to the SB 125 Program Guidelines.

2.2.c. Suspension of Reimbursement. TCAG shall timely pay or reimburse SPONSOR for all undisputed cost items. Reimbursement payments for the item(s) in question shall be suspended without interest when a dispute arises as to whether or not a cost item(s) is eligible for reimbursement.

2.2.c. (1) Meeting. If a dispute over reimbursement or payment occurs, then TCAG shall arrange a meeting between TCAG and SPONSOR to discuss and attempt to resolve the dispute. If the invoice was received on or before 5:00 p.m. on the 10th day of the month (or if the 10th is not a business day, then the next business day), then the meeting shall be held no later than the 20th day of the same month. If the invoice was received after this date and time, then the meeting shall be held no later than the 20th day of the following month.

2.2.c. (2) Technical Advisory Committee. If an agreement cannot be reached at the meeting referenced above, then SPONSOR or TCAG shall have the option to take the dispute to TCAG'S Technical Advisory Committee, with the understanding that by doing so the payment or reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.2.c. (3) Governing Board Decision. If SPONSOR or TCAG disagrees with the dispute resolution proposed by the Technical Advisory Committee, then the dispute shall be submitted to TCAG Governing Board for final resolution. Reimbursement or payment for the disputed cost item(s) will be further delayed until a resolution of the matter is reached by the

TCAG Governing Board. If the TCAG Governing Board determines that the disputed cost item(s) is ineligible for payment or reimbursement, then TCAG shall not provide reimbursement or payment to SPONSOR for the disputed item(s). If the TCAG Governing Board determines that the disputed cost item(s) is eligible for payment or reimbursement, in whole or in part, then TCAG promptly shall provide reimbursement or payment to SPONSOR for such portion of the disputed cost. The decision of the TCAG Governing Board shall be considered to be final for administrative purposes and not subject to reconsideration or further administrative appeal or review.

2.2.c. (4) **Reservation of Rights.** By utilizing the above procedures, SPONSOR does not surrender any rights to pursue available legal remedies if SPONSOR disagrees with a TCAG Governing Board decision.

2.2.d. **Acceptance of Work Does Not Result In Waiver.** Reimbursement payments shall not result in a waiver of the right of TCAG to require fulfillment of all terms of this Agreement.

2.3. **Right to Conduct Audit.** TCAG shall have the right to conduct an audit of all SPONSOR'S records pertaining to Projects at any time during the four (4) year period after completion of the Projects.

2.4. **Reconciliation of Excess Costs.** If the costs to complete a Project exceed the total amount of funds programmed, then TCAG may, by further agreement with SPONSOR, agree to provide additional SB 125 Program or other funding for the Project.

SECTION III Mutual Covenants

3.1. **Release of liability.** SPONSOR hereby releases TCAG from any liability to SPONSOR regarding TCAG'S administration and issuance of the SB 125 Program funds, except for any breach of TCAG'S fiduciary duty as set forth in the SB 125 Program Guidelines.

3.2. **Term.** This Agreement shall remain in effect until discharged or terminated as provided in Section 3.3 or Section 3.15.

3.3. **Discharge.** This Agreement shall be subject to discharge as follows:

3.3.a. **Termination by Mutual Consent.** This Agreement may be terminated between SPONSOR and TCAG at any time by mutual consent of SPONSOR and TCAG. If this Agreement is mutually terminated by the Parties, then SPONSOR will no longer receive SB 125 Program funds unless a new agreement between SPONSOR and TCAG is formed.

3.3.b. **Discharge Upon Completion of Project.** Except as to any rights or obligations which survive discharge as specified in Section 3.14 below, this Agreement shall be discharged, and the Parties shall have no further obligation to each other, upon completion of all of SPONSOR'S projects as certified by TCAG.

3.4. **Indemnity.** It is mutually understood and agreed, relative to the reciprocal

indemnification of TCAG and SPONSOR:

3.4.a. **Indemnity.** SPONSOR shall fully defend, indemnify and hold harmless TCAG, and any officer or employee of TCAG, against any damage or liability occurring by reason of anything done or omitted to be done by SPONSOR under the Agreement and related to SPONSOR'S Project(s). It is also fully understood and agreed that, pursuant to Government Code Section 895.4, SPONSOR shall fully defend, indemnify and hold TCAG harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by SPONSOR under this Agreement or in connection with any work, authority, or jurisdiction delegated to SPONSOR under this Agreement.

3.4.b. **Indemnity.** TCAG shall fully defend, indemnify and hold harmless SPONSOR, and any officer or employee of SPONSOR, against any damage or liability occurring because of anything done or omitted to be done by TCAG under or in connection with any work, authority or jurisdiction delegated to TCAG under the Agreement and related to SPONSOR'S Project(s). It is also understood and agreed that, pursuant to Government Code Section 895.4, TCAG shall fully defend, indemnify and hold SPONSOR harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by TCAG under this Agreement or in connection with any work, authority, or jurisdiction delegated to TCAG under this Agreement.

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

TCAG:

Executive Director
Tulare County Association of Governments
210 N. Church St. Ste B
Visalia CA 93291
Fax No.: 559-733 6720

SPONSOR:

[Title]
[Agency name]
[Agency street address]
[City], CA [zip code]
Fax No.: [Fax #]

3.5.a. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either Party may change the above address by giving written notice pursuant to this paragraph.

3.5.b. Either Party may change its address by giving notice of such changes to the other Party in the manner provided in this Section 3.5. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.6. **Additional Acts and Documents.** Each Party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of the Agreement.

3.7. **Integration.** This Agreement, together with any associated Program Supplement, represents the entire Agreement of the Parties with respect to the subject matter hereof. No

representations, warranties, inducements or oral agreements have been made by either of the Parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.8. **Amendment.** This Agreement may not be changed, modified or rescinded except in writing, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.9. **Independent Agency.** SPONSOR renders services under this Agreement as an independent agency and TCAG is also an independent agency under the Agreement. None of SPONSOR'S agents or employees shall be agents or employees of TCAG and none of TCAG'S agents or employees shall be agents or employees of SPONSOR.

3.10. **Assignment and Delegation.** The Agreement may not be assigned, transferred, hypothecated, or pledged by either Party, nor may either Party delegate its duties or responsibilities hereunder, without the express written consent of the other Party.

3.11. **Binding on Successors.** This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the Parties. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement or delegate duties or responsibilities hereunder, other than as provided above.

3.12. **Severability.** If any part of this Agreement is determined to be unenforceable, invalid, or beyond the authority of either Party to enter into or carry out, then such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the Parties.

3.13. **Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by both of the Parties, each counterpart shall be deemed an original, but all counterparts together shall constitute a single document.

3.14. **Survival.** The following provisions in this Agreement shall survive discharge of the Agreement:

3.14.a. **SPONSOR.** As to SPONSOR, the following Sections shall survive discharge: Section 1.7 (obligation to apply funds to Project), Section 1.8 (obligation to provide copies and retain records), and Section 1.9 (obligation to continue to manage Project).

3.14.b. **TCAG.** As to TCAG, the following Section shall survive discharge: Section 2.3 (right to conduct audit).

3.14.c. **All Parties.** As to all Parties, the following Sections shall survive discharge: Section 3.3.b. (obligation which survives termination), and Section 3.4. (mutual indemnities).

3.15. **Limitation.** All obligations of TCAG under the terms of this Agreement are expressly contingent upon TCAG'S continued authorization to receive and expend the funds provided by the SB 125 Program. If for any reason TCAG'S right or ability to receive or expend such funds is

terminated or suspended in whole or part so that it materially affects TCAG'S ability to fund a Project, then TCAG shall promptly notify SPONSOR, and the Parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the Parties, then this Agreement shall be deemed terminated by mutual or joint consent of the Parties. Any future obligation to fund a Project or any other project or projects of SPONSOR, not already specifically covered by separate Agreement, shall arise only upon execution of a new Agreement therefor.

3.16. **Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.

3.17. **Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.18. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California. The Parties agree that this contract is made in and shall be performed in Tulare County, California.

3.19. **Captions.** The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.20. **No Continuing Waiver.** The waiver by either Party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.21. **No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any Party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any Party to this Agreement.

3.22. **Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

3.23. **Signatory's Warranty.** Each Party warrants to each other that it is fully authorized and competent to enter into this Agreement in the capacity indicated by that Party's signature below and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other Party.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the day and year first written above.

TULARE COUNTY ASSOCIATION OF GOVERNMENTS

ATTEST:

By: _____
Chair of TCAG
Governing Board

By: _____
TCAG Executive Director

[CITY OF PORTERVILLE

By: _____
Mayor

ATTEST:

By: _____
City Clerk]

[CITY OF VISALIA

By: _____
Mayor

ATTEST:

By: _____
City Clerk]

[TULARE COUNTY REGIONAL TRANSIT AGENCY

By: _____
Chair of TCRTA
Governing Board

ATTEST:

By: _____
TCRTA Executive Director]

APPROVED AS TO FORM:
OFFICE OF TULARE COUNTY COUNSEL

APPROVED AS TO FORM:

By: _____
Deputy
Counsel for TCAG

By: _____
Counsel for SPONSOR

APPENDIX

**BUDGET ACT OF 2023
SB 125 FORMULA-BASED TRANSIT
AND INTERCITY RAIL CAPITAL
PROGRAM &
ZERO EMISSION TRANSIT
CAPITAL PROGRAM**

FINAL GUIDELINES

SEPTEMBER 29, 2023



SB125 FINAL GUIDELINES – FORMULAIC FUNDING

Contents

1	Authority and Purpose.....	2
2	Objectives	3
3	Eligible Recipients and Funding Distribution.....	4
4	Schedule	7
5	Eligible Projects.....	8
6	Requirements for Funding Allocations	11
7	Approval and Programming	20
8	Project Delivery and Reporting.....	21
9	Project Administration.....	22
	Attachment 1: CCI Funding Guidelines for Administering Agencies.....	23
	Investments to Benefit Disadvantaged Communities and Low-Income Communities and Households	23
	Attachment 2: Quantification Methodology and Co-Benefit Assessment Methodology.....	24
	CCI Quantification and Reporting Materials	24
	Attachment 3: Benefit Criteria Tables	26
	CCI Benefit Criteria Tables	26

1 Authority and Purpose

The Transit and Intercity Rail Capital Program (TIRCP) was created by Senate Bill (SB) 862 (Chapter 36, Statutes of 2014) and modified by SB 9 (Chapter 710, Statutes of 2015), to provide grants from the Greenhouse Gas Reduction Fund (GGRF) to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems, and bus and ferry transit systems, to significantly reduce emissions of greenhouse gases, vehicle miles traveled, and congestion. The legislation of these bills is codified in Sections 75220 through 75225 of the Public Resources Code (PRC). Assembly Bill (AB) 398 (Chapter 135, Statutes of 2017) extended the Cap-and-Trade Program that supports the TIRCP from 2020 through 2030. SB 1 (Chapter 5, Statutes of 2017) continues to provide a historic funding increase for transportation with funds directed to the TIRCP from the Public Transportation Account (PTA).

AB 102 (Chapter 38, Statutes of 2023) and SB 125 (Chapter 54, Statutes of 2023) amended the Budget Act of 2023 to appropriate \$4,000,000,000 of General Fund to the TIRCP over the next two fiscal years as well as \$910,000,000 of GGRF funding and \$190,000,000 of PTA funding over the next four fiscal years to establish the Zero-Emission Transit Capital Program (ZETCP). These guidelines are specifically developed to facilitate the award of these funds to projects in an expeditious manner.

These guidelines include elements of the policy, standards, criteria, and procedures for the development, adoption, evaluation and administration of the TIRCP last updated for Cycle 6 (which delivered its last tranche of funding for project awards in July 2023) but are unique to this particular cycle of TIRCP funding. In allowing the funds covered by these guidelines to be available for operating costs, the guidelines are also required to be aligned with the legislative intent described in subdivision (d) of Section 75226 of, and subdivision (f) of Section 75260, of the Public Resources Code. They will be further informed by input received through workshops, public comments and written responses to be received by September 14, 2023.

SB 125 provided additional direction with regards to the funding appropriated in the Budget Act of 2023. It created specific categories for funding as follows:

- A) \$3,995,000,000 over the next two fiscal years shall be distributed pursuant to a population-based formula to regional transportation planning agencies (RTPA) as defined in Section 7 of these guidelines. The bill authorizes RTPAs to use the moneys for high-priority transit capital projects consistent with the uses allowed in Cycle 6 of the TIRCP, which includes existing projects seeking to maintain or obtain federal or local funding commitments, project development for major projects that are seeking to enter or have already entered project development with federal partners, or for new TIRCP projects. As in Cycle 6, all capital projects must both increase ridership and reduce greenhouse gas emissions, in common with traditional TIRCP project requirements. The funding may also be used to fund transit operating expenses that prevent service cuts and increase ridership for operators within the RTPAs jurisdiction, subject to compliance with requirements and further detail described in Section 6 of these guidelines.
- B) \$1,100,000,000 over the next four fiscal years shall be for the establishment of the Zero-Emission Transit Capital Program (ZETCP) and requires funds under the program to be allocated to RTPAs pursuant to a population-based formula and another formula based on transit operator revenues within the jurisdiction of these RTPAs, as specified (the formula described is consistent with the current State Transit Assistance formula). The bill authorizes RTPAs to use the moneys for zero-emission transit equipment, including, but not limited to, zero-emission vehicles and refueling infrastructure and, subject to compliance with requirements described in Section 6 of these guidelines, to use those moneys to fund transit operating expenditures that prevent service reduction or elimination in order to maintain or increase ridership.

NOTE: Cycle 7 of TIRCP, funded with the regular GGRF and SB1 sources, is expected to be delayed approximately two months from its regular calendar, with a call for projects around December 1, 2023 and

applications due around March 1, 2024. The proposed timeline reflects eligible applicant feedback and will allow applicants to incorporate the regional choices made under SB 125 when determining what to submit to the competitive TIRCP cycle. Based on this timeline, the Program of Projects would be announced around June 1, 2024.

2 Objectives

The TIRCP was created to fund transformative capital improvements that modernize California's intercity rail, bus (including feeder buses to intercity rail services, as well as vanpool and micro transit services that are eligible to report as public transit to the Federal Transit Administration), ferry, and rail transit systems (collectively referred to as transit services or systems inclusive of all aforementioned modes unless otherwise specified) to achieve all of the following policy objectives, as codified in Section 75220(a) of the PRC:

1. Reduce emissions of greenhouse gases
2. Expand and improve transit service to increase ridership
3. Integrate the rail service of the state's various rail operations, including integration with the high-speed rail system
4. Improve transit safety

Additionally, Section 75221(c) of the PRC codifies a programmatic goal to provide at least 25 percent of available funding to projects that provide a direct, meaningful, and assured benefit to disadvantaged communities, consistent with the objectives of SB 535. AB 1550 provides further requirements related to ensuring investments meet the needs of priority populations, a term used to cover disadvantaged communities, low-income communities and low-income households. Investments made by TIRCP are expected to collectively meet or exceed the requirements in AB 1550. Each RTPA will need to provide information related to its projects sufficient to determine the nature of priority population benefits; however, there is no minimum requirement that each project or RTPA needs to meet for the projects submitted.

Taken as a whole, the increases in transit system ridership, as well as the reduction in vehicle miles traveled, congestion and greenhouse gas emissions, will help deliver a healthier and safer transportation system. Investments are expected to position the state to lead in the deployment of cutting edge and zero emission technologies, test innovative strategies and new approaches to reducing transportation-related fatalities, provide important new capacity in corridors that support growth in jobs and housing, and to expand multimodal transportation access and options for all Californians across all regions of the state.

Further, as outlined in SB 125, which amended the Budget Act of 2023, it is the intent of the Legislature to:

- (1) provide one-time multiyear bridge funding for transit operators to address operational costs until long-term transit sustainability solutions are identified
- (2) assist transit operators in preventing service cuts and increasing ridership
- (3) prioritize the availability of transit for riders who are transit dependent
- (4) prioritize transit agencies representing a significant percentage of the region's ridership

To that end, SB 125 specifies that the moneys appropriated in the Budget Act of 2023 may be used for high-priority transit capital projects within the project eligibility categories allowed under TIRCP in Cycle 6, and also for transit operating expenses for operators within the RTPAs jurisdiction. Further detail on the definition of transit operator is included in Section 3.

3 Eligible Recipients and Funding Distribution

The first year of funding for TIRCP and the ZETCP is already available for distribution once required materials are submitted and must be fully encumbered or expended and liquidated by CalSTA by June 30, 2028. FY23-24 funds for TIRCP and the ZETCP must be disbursed to RTPAs by this deadline. Once received by the RTPA there is no deadline for the expenditure of funds.

TIRCP funding will be allocated in both FY23-24 and FY24-25 to RTPAs according to a population-based formula after each recipient first receives \$300,000 of base funding.

The \$410 million of first year ZETCP funding (from both PTA and GGRF sources), as well as the \$230 million for each of the succeeding three years (from GGRF only), will be allocated to RTPAs pursuant to a population-based formula and another formula based on transit operator revenues within the jurisdiction of these RTPAs. This formula matches the approach used to calculate State Transit Assistance distribution.

Eligible recipients of funding are the RTPAs, as defined in Section 13987(j) of the Government Code. The current eligible recipients based on that definition and initial fund estimates by expected recipient are as follows:

A	B	C	D	E	F	G
RTPA	Year 1 TIRCP	Year 2 TIRCP	Year 1 ZETCP (53.66% GGRF, 46.34% PTA)	Years 2-4 ZETCP (per yr, 100% GGRF)	Grand Total (B+C+D+(E*3))	Maximum Admin Share
Metropolitan Transportation Commission	\$385,068,697	\$386,040,188	\$149,679,519	\$83,966,559	\$1,172,688,081	\$5,000,000
Alpine County Transportation Commission	\$360,641	\$360,794	\$6,740	\$3,781	\$739,518	\$25,000
Amador County Transportation Commission	\$2,336,465	\$2,341,606	\$218,158	\$122,381	\$5,263,373	\$52,634
Butte County Association of Governments	\$10,488,545	\$10,514,269	\$1,113,156	\$624,454	\$23,989,331	\$239,893
Calaveras County Local Transportation Commission	\$2,576,611	\$2,582,360	\$238,532	\$133,811	\$5,798,936	\$57,989
Colusa County Local Transportation Commission	\$1,402,047	\$1,404,830	\$119,153	\$66,842	\$3,126,556	\$31,266
Del Norte County Local Transportation Commission	\$1,675,501	\$1,678,974	\$149,752	\$84,007	\$3,756,247	\$37,562
El Dorado County Local Transportation Commission	\$9,085,857	\$9,108,041	\$971,781	\$545,145	\$20,801,115	\$208,011
Tahoe Regional Planning Agency	\$5,753,283	\$5,767,052	\$596,916	\$334,855	\$13,121,818	\$131,218
Fresno County Council of Governments	\$51,406,113	\$51,535,149	\$6,249,069	\$3,505,575	\$119,707,058	\$1,197,071
Glenn County Local Transportation Commission	\$1,752,922	\$1,756,591	\$154,691	\$86,778	\$3,924,537	\$39,245
Humboldt County Association of Governments	\$7,130,906	\$7,148,153	\$825,047	\$462,831	\$16,492,599	\$164,926

Imperial County Transportation Commission	\$9,362,644	\$9,385,526	\$1,027,524	\$576,416	\$21,504,942	\$215,049
Inyo County Local Transportation Commission	\$1,259,080	\$1,261,501	\$99,284	\$55,696	\$2,786,952	\$27,870
Kern Council of Governments	\$46,278,687	\$46,394,777	\$5,050,974	\$2,833,473	\$106,224,857	\$1,062,249
Kings County Association of Governments	\$7,982,701	\$8,002,098	\$827,175	\$464,025	\$18,204,049	\$182,040
Lake County/City Council of Governments	\$3,706,510	\$3,715,111	\$370,593	\$207,894	\$8,415,895	\$84,159
Lassen County Local Transportation Commission	\$1,829,937	\$1,833,800	\$165,103	\$92,619	\$4,106,698	\$41,067
Los Angeles County Metropolitan Transportation Authority	\$498,650,905	\$499,909,177	\$119,494,973	\$67,033,765	\$1,319,156,350	\$5,000,000
Madera County Local Transportation Commission	\$8,254,231	\$8,274,315	\$850,825	\$477,292	\$18,811,248	\$188,112
Mariposa County Local Transportation Commission	\$1,161,396	\$1,163,571	\$91,799	\$51,497	\$2,571,256	\$25,713
Mendocino Council of Governments	\$4,848,229	\$4,859,713	\$505,296	\$283,459	\$11,063,615	\$110,636
Merced County Association of Governments	\$14,669,424	\$14,705,704	\$1,558,919	\$874,515	\$33,557,593	\$335,576
Modoc County Local Transportation Commission	\$739,160	\$740,269	\$49,336	\$27,676	\$1,611,794	\$25,000
Mono County Local Transportation Commission	\$976,126	\$977,834	\$171,629	\$96,279	\$2,414,427	\$25,000
Transportation Agency for Monterey County	\$22,218,449	\$22,273,790	\$2,975,692	\$1,669,291	\$52,475,803	\$524,758
Nevada County Local Transportation Commission	\$5,416,406	\$5,429,324	\$554,558	\$311,093	\$12,333,568	\$123,336
Orange County Transportation Authority	\$160,108,526	\$160,512,022	\$22,473,788	\$12,607,247	\$380,916,076	\$3,809,161
Placer County Transportation Planning Agency	\$16,356,936	\$16,397,478	\$1,900,006	\$1,065,857	\$37,851,991	\$378,520
Plumas County Local Transportation Commission	\$1,257,263	\$1,259,680	\$114,463	\$64,211	\$2,824,038	\$28,240
Riverside County Transportation Commission	\$123,382,700	\$123,693,468	\$14,828,290	\$8,318,309	\$286,859,385	\$2,868,594
Sacramento Area Council of Governments	\$100,321,824	\$100,574,367	\$13,907,018	\$7,801,498	\$238,207,702	\$2,382,077
Council of San Benito County Governments	\$3,609,072	\$3,617,427	\$348,002	\$195,221	\$8,160,164	\$81,602
San Bernardino County Transportation	\$110,856,746	\$111,135,888	\$13,864,934	\$7,777,890	\$259,191,238	\$2,591,912

Authority						
San Diego Association of Governments	\$48,212,817	\$48,333,791	\$6,181,044	\$3,467,415	\$113,129,896	\$1,131,299
San Diego Metropolitan Transit System	\$118,515,843	\$118,814,323	\$17,265,263	\$9,685,392	\$283,651,604	\$2,836,516
San Joaquin Council of Governments	\$39,935,609	\$40,035,684	\$5,031,810	\$2,822,723	\$93,471,271	\$934,713
San Luis Obispo Area Council of Governments	\$14,486,636	\$14,522,455	\$1,569,547	\$880,477	\$33,220,070	\$332,201
Santa Barbara County Association of Governments (SBCAG)	\$22,796,994	\$22,853,796	\$2,916,400	\$1,636,030	\$53,475,278	\$534,753
Santa Cruz County Transportation Commission	\$13,771,188	\$13,805,201	\$2,649,968	\$1,486,567	\$34,686,060	\$346,861
Shasta Regional Transportation Agency	\$9,423,391	\$9,446,427	\$993,316	\$557,226	\$21,534,813	\$215,348
Sierra County Local Transportation Commission	\$463,183	\$463,595	\$17,533	\$9,836	\$973,818	\$25,000
Siskiyou County Local Transportation Commission	\$2,515,009	\$2,520,601	\$239,061	\$134,108	\$5,676,994	\$56,770
Stanislaus Council of Governments	\$28,068,044	\$28,138,155	\$3,037,849	\$1,704,159	\$64,356,526	\$643,565
Tehama County Transportation Commission	\$3,587,498	\$3,595,798	\$347,323	\$194,840	\$8,115,139	\$81,151
Trinity County Transportation Commission	\$1,109,747	\$1,111,791	\$86,567	\$48,562	\$2,453,791	\$25,000
Tulare County Association of Governments	\$24,305,505	\$24,366,115	\$2,748,056	\$1,541,592	\$56,044,453	\$560,445
Tuolumne County Transportation Council	\$3,094,210	\$3,101,265	\$296,569	\$166,368	\$6,991,148	\$69,911
Ventura County Transportation Commission	\$42,429,785	\$42,536,157	\$5,066,998	\$2,842,463	\$98,560,328	\$985,603

Funding distributions will be only made to the above recipients, utilizing fund transfer instructions confirmed with CalSTA by the RTPA prior to transfer, which may in turn make funding available to public agencies in their jurisdiction. RTPAs have the discretion to suballocate or distribute funds within their region based on local needs, existing procedures, policies or priorities, as long as required SB 125 program requirements and goals are met, including addressing how operating needs are expected to be met with SB 125 and/or other resources.

For TIRCP and ZETCP capital projects, the RTPAs may distribute funding to public agencies eligible to receive TIRCP capital funding, including joint powers agencies, that operate or have planning responsibility for existing or planned regularly scheduled intercity or commuter passenger rail service (and associated feeder bus service to intercity rail services), urban rail transit service, or bus or ferry transit service (including commuter bus, vanpool, and micro transit services). Public agencies include local municipalities that operate transit service, construction authorities, transportation authorities, and other similar public entities created by statute. Please note that within such capital projects, with the exception of projects that are in the federal pipeline for major projects project development, the projects funded must result in

construction being completed, as is required under traditional TIRCP funding.

For any spending on transit operations to prevent service reduction or elimination in order to maintain or increase ridership, or to otherwise increase ridership, the RTPAs may distribute funding to transit operators in their jurisdiction that are eligible to receive State Transit Assistance (STA) funding through Section 99314 at the time of distribution by the RTPA. Please note that preventing service reduction and elimination includes the broad variety of expenses required to provide service, including those related to ensuring safety and state of good repair of the vehicles and infrastructure.

RTPAs may also be the sponsor of capital and operating projects and may partner on projects with the agencies eligible to receive funding (such as doing a planning effort tied to making the underlying project more beneficial in a regional context upon implementation).

RTPAs must deposit funds into one or more dedicated bank accounts or custody accounts. Permitted investments include bank demand deposits consistent with California government code, government money market funds, U.S. Treasuries, U.S. Agency securities, California Local Agency Investment Fund (LAIF), and AAA public agency pools, to the extent permitted by RTPA policy and state statute. If a separate account is not possible, the agency may show documents of a line item or subaccount dedicated to SB 125 funds. Funds will be disbursed separately from each fund source supporting SB 125 (General Fund for TIRCP; PTA and GGRF for ZETCP) and identified as such when disbursed. RTPAs are responsible for tracking the receipt and utilization of these funds separately, and recording interest earned (or other investment income earned) on each fund source separately. The interest or investment earnings must also be spent on approved eligible projects within each program and will be accounted for when an agency submits its required Annual Report, as described in Section 9. When the recipient agency submits its Annual Report, they are required to submit a copy of their most recent bank statement. The additional spending made possible by interest or investment earnings shall be approved through submitting an Updated Program Allocation Request to CalSTA, which will approve such spending based on review of project eligibility.

RTPAs, transit operators and other public agencies expending SB 125 formula funding assume responsibility and accountability for the use and expenditure of allocated funds in accordance with these guidelines and applicable statutes. These agencies must also comply with all relevant federal and state laws, regulations, policies, and procedures.

4 Schedule

CalSTA Publishes 2023 SB 125 Guidelines	September 29, 2023
Optional, time-limited, focused virtual meetings for agencies to discuss and clarify program requirements (will be scheduled by request)*	October 16-December 8, 2023
Initial Allocation Package Submittal Due	December 31, 2023
Regionally Compiled Transit Operator Data Due	December 31, 2023
Requested Funding Will be Allocated No Later Than	April 30, 2024
<i>*Comments and requests for meetings can be submitted to: SB125transit@calsta.ca.gov</i>	

5 Eligible Projects

TIRCP Funding (\$3.995 billion)

In order to be eligible for TIRCP capital project funding under this program, a capital project must demonstrate that it will achieve a reduction in greenhouse gas emissions using the relevant sections of the ZETCP Quantification Methodology. It must also demonstrate an increase in ridership.

As codified in Section 75221(a) of the PRC, projects eligible for funding under the program include, but are not limited to, the following:

1. Rail capital projects, including intercity rail, commuter rail, light rail, and other fixed guideway projects. Additionally, the acquisition of rail cars and locomotives, and the facilities to support them, that expand, enhance, and/or improve existing rail systems and connectivity to existing and future transit systems, including the high-speed rail system.
2. Intercity, commuter, and urban rail projects that increase service levels, improve reliability, or decrease travel times, infrastructure access payments to host railroads in lieu of capital investments, efforts to improve existing rail service effectiveness with a focus on improved operating agreements, schedules, and minor capital investments that are expected to generate increased ridership, as well as larger scale projects designed to achieve significantly larger benefits.
3. Rail, bus, and ferry integration implementation, including:
 - a. integrated ticketing and scheduling systems and related software/hardware capital investments (including, but not limited to, integration with bus or ferry operators and the use of contactless payment and General Transit Feed Specification (GTFS) implementation through Cal-ITP)
 - b. projects enabling or enhancing shared-use corridors (both multi-operator passenger only corridors as well as passenger-freight corridors)
 - c. related planning efforts focused on, but not limited to, delivery of integrated service not requiring major capital investment, such as transit route and schedule integration (or coordination)
 - d. other multimodal and service integration initiatives, including active transportation and other access investments which increase transit and rail ridership and reduce greenhouse gas emissions
4. Bus rapid transit and other bus and ferry transit investments (including autonomous fixed guideway, vanpool, and micro transit services operated as public transit and first-/last-mile solutions), and to increase ridership and reduce greenhouse gas emissions. This includes large scale deployment of zero emission vehicles and the technologies to support them, and capital investments as a component implementing transit effectiveness studies that will contribute to restructured and enhanced service.

Grade separations and grade crossing improvements on passenger rail corridors or related to transit projects are eligible, as they are under the discretionary TIRCP. In addition to providing safety benefits, these projects often provide certain roadway based (and sometimes rail related) greenhouse gas emission reductions and a small increase in ridership (tied to reductions in train delays and cancellations tied to incidents at the crossing, and sometimes speed increases that occur after crossings are improved or eliminated). In some cases, ridership increases from such projects are more significant if they are necessary to increase train frequency.

Projects related to mitigating the impacts on freight rail services that are caused by growth in passenger rail may also be eligible for TIRCP funding even if they are not directly on the passenger rail corridor.

Projects that link housing with key destinations and that improve accessibility to economic opportunities are also eligible for TIRCP funding.

Demonstration projects that are smaller-scale efforts with great potential to be expanded are eligible for

funding.

Projects may include new approaches to attracting increased ridership such as smart phone mobile ticketing, contactless payment, or other software and hardware solutions to reduce ticketing transaction costs, or a test of a concept related to integrated ticketing, as well as intercity rail/transit effectiveness or operational planning as a component of the capital investments in improved, expanded and/or restructured service designed to cost-effectively increase ridership. Research, development, and testing of emerging technologies are eligible components. Clean fleet, facility and network improvement projects may also request funding for Zero Emission Mobility Programs, in lieu of Zero Emission Vehicle purchase, in compliance with Innovative Clean Transit Regulation Section 2023.5.

Many TIRCP applicants have met the requirements for reducing greenhouse gas emissions and increasing ridership through combining related capital investments that may individually address only one or the other benefit. Many TIRCP applicants have also augmented their chosen capital projects with key network integration planning studies that consider how to enhance the benefits of their projects (in connecting to other transit and rail systems), or planning efforts that consider a later phase of capital investment and the benefits it will bring to the current proposed project when constructed at a later date.

Agencies may apply to TIRCP Cycle 7 or later for projects that use SB 125 resources for new projects, either to complete project funding or to expand project scope; SB 125 funding will be counted as matching funds in future TIRCP discretionary grant applications. Additional guidance will be provided in the TIRCP Cycle 7 guidelines.

Additionally, RTPAs may suballocate funds to agencies in their jurisdiction so agencies may use this funding to support projects that have previously received a TIRCP award and require an additional infusion of resources to deliver the original scope. RTPAs may also allocate funding to any project awarded funds in Cycle 6 that pledged to use future TIRCP formula funds as match, in accordance with the direction provided in the Cycle 6 guidelines. RTPAs may assume that any funding from these SB 125 resources will help obtain or maintain funds from federal, state and local sources already committed to the projects, and document this benefit for their own projects, and require such documentation of benefits from project sponsors for other projects, in their Allocation Package submissions. Agencies shall state which project is seeking additional funds, identifying the Cycle 1 through 6 project, and whether the funding is needed for the full project scope or for a subcomponent.

RTPAs may suballocate funds to agencies in their jurisdiction so agencies may also use this funding for project development activities, similar to the “Major Projects Project Development Reserve” that was established in the Cycle 6 guidelines, including use of additional funding for projects that received funding for such projects in the Cycle 6 awards. While projects and programs of projects do not need to be ready for construction, agencies should identify how their project or program of projects will be eligible to apply for TIRCP construction funding in the future and what specific federal, state and other funding programs they are planning to utilize for construction funding. As in Cycle 6, such projects must either be pursuing Capital Investment Grant funding through the Federal Transit Administration (FTA) or be part of the pursuit of Federal Railroad Administration funding through the Corridor Identification Program. Projects not pursuing federal funds for construction from FTA or planning to pursue FRA capital funding for construction through one of the Bipartisan Infrastructure Law programs are not eligible. Agencies may apply to TIRCP Cycle 7 or later for projects that use SB 125 resources for project development; SB 125 funding will be counted as matching funds in future TIRCP discretionary grant applications.

RTPAs that are themselves the capital project sponsor may also utilize funds for their own projects.

RTPAs are also authorized to use TIRCP moneys, subject to compliance with requirements described in Section 6 of these guidelines, to fund transit operating expenses within its jurisdiction that prevent service cuts and increase ridership, including those related to ensuring safety and state of good repair of the vehicles and infrastructure necessary to operate service, as well as those that pay for free and reduced fare programs. Planning expenses related to implementation of ridership recovery and retention strategies are also eligible as operating projects, whether at the

RTPA or STA-eligible transit operator level. RTPAs that are themselves the operator of transit services may also utilize funds for their own operations. Service planning necessary to experiment with, demonstrate or implement significant service modifications may be funded as an operating expenditure at either the RTPA or transit operator level.

ZETCP Funding (\$1.1 billion)

Pursuant to SB 125, zero-emission transit equipment, transit facility and network improvement projects such as those that support replacing aging vehicle fleets with Zero-Emission Vehicles (ZEVs), and associated fueling or charging infrastructure or facility modifications, are eligible projects for the Zero-Emission Transit Capital Program (ZETCP). ZEVs include heavy- and light-rail vehicles, buses, and other ZEVs used for transit service. Clean fleet, facility and network improvement projects may also request funding for Zero Emission Mobility Programs, in lieu of Zero Emission Vehicle purchase, in compliance with Innovative Clean Transit Regulation Section 2023.5.

GGRF funds used on these projects (53.7% of the first year and 100% of years 2-4) will require submission of information described in the ZETCP Quantification Methodology, as expending GGRF funds requires benefits reporting. They also require compliance with the CARB Funding Guidelines applicable to all GGRF funding, including semi-annual benefits reporting and identification of benefits to priority populations.

ZETCP funding may also be used for transit operations expenditures that prevent service reduction or elimination in order to maintain or increase transit ridership, in accordance with the provisions described in Section 6 of these guidelines, including those related to ensuring safety and state of good repair of the vehicles and infrastructure necessary to operate service, as well as those that pay for free and reduced fare programs. Planning efforts necessary to implement one or more of the Innovative Clean Transit Plan efforts within the region, and planning expenses related to implementation of ridership recovery and retention strategies, may be programmed as an operating expense out of the PTA portion of funds disbursed to each RTPA, but must be requested in an Allocation Package submission covering the FY23-24 funding year.

A maximum of 1% of total multi-year SB 125 funding, or \$5 million, whichever is lower, may be programmed by the RTPA for RTPA administration of SB 125 funding across both the TIRCP and ZETCP, and for planning expenses related to preparing and implementing the initial short-term financial plan, updates to the short-term financial plan, and the long-term financial plan, including planning expenses related to implementation of ridership recovery and retention strategies. If less than \$25,000 would be available under this formula, a maximum of \$25,000 shall be available to such RTPAs for RTPA administration and planning expenses. As the RTPAs are tasked with developing the regional long-term financial plan for their jurisdictions, there is no requirement to program and suballocate funds to transit operators for this purpose, although they may do so at their discretion. The RTPAs can procure professional services or use their own staff to gather the reports, data and relevant information needed to develop the regional long-term financial plan required by SB 125. This request must be made in the Allocation Package submissions covering FY 23-24 funding from the ZETCP due on December 31, 2023, as an operating project associated with the RTPA, as most funding will be drawn from the Public Transportation Account resources only available in that year. If included in the December 31, 2023 submission, funds may be applied to expenses incurred at any point in the RTPAs FY23-24 fiscal year, including those incurred prior to receipt of funding, subject to RTPA policies that allow such reimbursement. Very small RTPAs may be directed by CalSTA to program the balance of funding from 1st year General Fund resources available under TIRCP if there are insufficient PTA funds available to meet their requested administrative funding amount. Small RTPAs are encouraged to combine planning efforts if feasible. Should RTPAs be part of project-specific project management, resources required for those efforts are to be separately identified as part of the funding requested for each project, as appropriate.

6 Requirements for Funding Allocations

Each RTPA seeking allocation of funding shall complete an Initial Allocation Package by December 31, 2023. Allocation Packages are encouraged to describe the full four-year plan for use of formulaic funds if already known, understanding that each year's funds are subject to appropriation in the respective budget year. However, Allocation Packages are expected to be updated for future years should there be any change in funding availability or projects selected for funding distribution. Allocation packages will be treated in accordance with Public Records Act requirements and certain information, subject to those requirements, may be publicly disclosed.

Each Allocation Package shall include, as applicable, the following:

- A. **A signed cover letter**, with signature authorizing and approving the request by the eligible RTPA. This cover letter should also confirm that the RTPA developed the plan in consultation and coordination with its transit operators.
- B. **An Allocation Package Narrative Explanation**, covering most of the requirements for the **regional short-term financial plan for immediate service retention** required by statute. This narrative explanation is required by December 31, 2023, unless the RTPA declares that none of the STA-eligible transit operators eligible to receive funding within their jurisdiction will have an operational funding need for SB 125 or additional discretionary or nonformula state funding between the 2023-24 fiscal year and the 2026-27 fiscal year, inclusive. It also must declare that it will not use the SB 125 funding as operating funding for any of its STA-eligible transit operators (or its own transit operations, when the RTPA also operates transit service). Such declarations may take the place of the narrative explanation, if applicable. Even if such declarations are made, the regional Allocation Package Narrative Explanation will still be a required submission by December 31, 2024, in order to receive a timely allocation of FY24-25 funding from SB 125 sources.

The Allocation Package Narrative Explanation shall include the following:

- i. **An explanation of what funding and service actions are being taken within the region that utilize resources other than SB125 funding.** This explanation incorporates the requirement to provide *a demonstration of how the region will address any operational deficit, using all available funds, through the 2025–26 fiscal year, based on a 2022 service baseline*. Each plan shall provide narrative and data describing the funding approach that addresses expected operational deficits of existing STA-eligible transit operators through the 2025-26 fiscal year across all the region's STA-eligible transit operators, including strategies to use all available local, state, and federal funds to address such deficits, and the impacts such strategies may have on any capital projects. This section shall focus on the approaches the region is taking and plans to take before the use of SB 125 funds to mitigate operational deficits, both in calendar year 2023 and in future fiscal years through the end of FY25-26. When applicable, this should include reference to delay or elimination of lower priority capital projects to increase funding for operations, utilizing historically high State Transit Assistance funding tied to recent high diesel fuel prices, the use of federal transit formula funding made higher through the Infrastructure Investment and Jobs Act (IIJA) for preventative maintenance expenditures within the operating budget, or the use of higher Local Transportation Fund revenues tied to healthy sales and use tax receipts in certain counties. In some cases, strategies involving the use of non-SB 125 funds to increase transit operator funding may allow SB 125 funds to target capital needs. If utilized, such strategies should be described in this section. To the extent that such deficits cannot be fully addressed with available funds and actions, service impacts relative to the December 31, 2022 service baseline shall be described. *This section shall be analyzed and reviewed for completeness. It is understood to be a summary of major*

actions taken and planned to be taken across the region based on RTPA and/or transit operator decision-making.

- ii. **A description and justification of the RTPA strategy to use SB 125 funding to construct capital projects and fund operating expenses that lead to improved outcomes in its jurisdiction.** This section shall describe the region's overall strategy for choosing to spend the expected SB 125 funds on the capital projects and operational expenses described in its Allocation Package. This section addresses the statutory requirements to provide a *justification for how the region's funding is proposed to be allocated to capital and operational expenses* and provide a *demonstration of how the plan will mitigate service cuts, fare increases, or layoffs relative to a 2022 service baseline to achieve short-term financial sustainability*. This section shall highlight the specific manner in which SB 125 funding requested for operations will reduce or eliminate the need for service cuts, fare increases or layoffs. With recent positive results from efforts designed to increase speed of transit services, allowing similar levels of service with lower operating costs or more service with the same operating budget, this section of the Allocation Package would benefit from describing any such efforts that are proposed for the region and transit operators in question. This can include transit-specific infrastructure, stop consolidation, or other efforts. In addition, this description addresses the statutory requirement to provide a *summary of how the plan will support ridership improvement strategies that focus on riders, such as coordinating schedules and ease of payment and improving cleanliness and safety, to improve the ridership experience*. Since increasing ridership and the associated fare revenues is one approach to strengthening the financial performance of each region's transit operators, this section shall highlight any portion of the capital projects or any portion of operating funds that are specifically focused on supporting improvement in ridership. This section should also describe any efforts to integrate fares among transit agencies in the region or even outside of the region covered by the RTPA. *This section shall be analyzed and reviewed for completeness.*
- iii. **A detailed breakdown and justification for how the funding is proposed to be distributed between transit operators and among projects, consistent with the legislative intent described in SB 125.** This section shall include a narrative (and appropriate data and tables) describing the justification for the funding distribution to each specific operator and project that is requested. If requesting spending for transit operations, this section shall address the following items identified in the legislative intent language in SB 125:
 1. address operational costs until long-term transit sustainability solutions are identified
 2. assist transit operators in preventing service cuts and increasing ridership
 3. prioritize the availability of transit for riders who are transit dependent
 4. prioritize transit agencies representing a significant percentage of the region's ridership

If requesting funding for both capital projects and transit operations, the justification for the capital project shall include discussion of the high-priority nature of the capital project and the significance of its completion to the region. In most cases, existing TIRCP-funded capital projects that are already substantially funded and in need of additional resources for completion are expected to be prioritized over beginning new projects. This narrative section should address the approach to this issue. *This section shall be analyzed and reviewed for completeness.*

- C. **An Allocation Package Detailed Project Description**, required of all agencies requesting an allocation, regardless of whether they are required to submit a short-term financial plan by the end of 2023. This detailed project description covers all projects that are recommended by the RTPA for SB 125 funding. It does not need to fully utilize all available funds, as this document may be updated on a rolling basis throughout the period covered by SB125 funding as part of an Updated Allocation Package submission. However, for timely distribution of FY23-24 funds, this portion of the Allocation Package must be submitted by December 31, 2023, and for timely distribution of FY24-25 funds, by December 31, 2024.

The **detailed project description** described above must provide details about how the funding is proposed to be distributed between transit operators and among projects, both capital and operations. *This section shall be analyzed and reviewed for project eligibility and completeness.*

The list is divided into three sections, covering TIRCP Capital, ZETCP Capital and Operations Funding. Required contents for each are below.

TIRCP Capital

1. If an agency is requesting allocations for funding for an **existing TIRCP project** (i.e., a project that has received a previous TIRCP grant, including those involving project development for major projects), they should identify the title of the project and the TIRCP cycle of award (cycles 1-6). They should also identify whether the funds will be used for the full project or for a subcomponent. Each project receiving additional funding shall identify the reason for additional funds being needed, including cost escalation, additional scope requirements or maintaining federal funding commitments. No additional GHG reduction or increased ridership benefits are required to request funds for an existing TIRCP project.
2. If an agency is requesting allocation for funding for **new TIRCP-eligible projects**, they shall include for each requested TIRCP capital project:
 - a. A summary or fact sheet (one- to two-page) that includes the following elements:
 - i. Implementing agency or agencies
 - ii. Project title
 - iii. Dates for the start and end of each project phase
 - iv. Summary of project scope
 - v. Total project costs, including identification of the amount of funding used for project management as budgeted for the agency or agencies involved (inclusive of RTPA project management)
 - vi. Identification of the source, type and amount of all funding
 - b. A detailed project schedule, including the project's current status, and the completion dates of all major delivery milestones.
 - c. Project Location – provide a map for each of the following:
 - i. Project location denoting the project site. Provide a KML file for the project with the transit route/project location represented by lines and stops represented by points as applicable.
 - ii. In addition to showing where housing exists, provide information on housing density and planned/zoned/permitted/etc. housing density. This information may come from planning documents and/or zoning code if other approaches are not readily available.

- iii. In addition to illustrating existing employment centers, provide information on employment density, mix of employment types, and planned future employment land uses. This information may come from planning documents and/or zoning code if other approaches are not readily available.
 - iv. Planned and existing active transportation infrastructure (what currently exists, what is planned, and what would be funded by the project).
 - d. An explanation of greenhouse gas reducing features of the project such as project components that improve air quality and reduce greenhouse gas emissions along a specific corridor, surrounding land use density, housing and employment centers, transit- oriented development/sustainable communities strategy projects, active transportation infrastructure and other features, to the extent available. For all construction projects, agencies are required to submit a copy of the California Air Resources Board (CARB) Quantification Methodologies (QMs) and Calculator Tools for estimating greenhouse gas (GHG) emission reductions and co-benefits identified in Attachment 2.
 - e. An explanation of expected ridership benefits of the project when constructed, including how the project supports better integration of transit services in the region among modes and providers if applicable.
 - f. If applicable, an explanation of how some or all of the project is expected to provide direct, meaningful, and assured benefits to a disadvantaged community, low-income communities or low-income households as defined by SB 535 and AB 1550.
3. If agencies plan to use this funding for only **project development activities for a new project**, they are required to show how their project or program of projects will be eligible to apply for TIRCP construction funding in the future. If the project would not be eligible to apply for TIRCP as a new project, it will not qualify for funding for project development. Agencies shall also demonstrate that they have entered into, or have applied to enter into, federal project development processes for at least a portion of the project or program of projects, and that they expect to receive federal funding in the future once complete with project development. If the agency expects to be able to leverage state funding to provide the match necessary to obtain federal planning funds, this should also be identified. The required detail for project development only is as follows:
- a. A summary or fact sheet (one- to two-page) that includes the following elements:
 - i. Implementing agency or agencies
 - ii. Project title
 - iii. Dates for the start and end of each project development phase, as well as the anticipated date of construction
 - iv. Summary of overall project scope for the constructed project, with an emphasis on project development scope
 - v. Total project costs for project development, and an estimate of the fully constructed project cost if available
 - vi. Identification of the source, type and amount of all funding for the project development phase and intended funding for the construction phase
 - b. A detailed project schedule for the project development phase, including the project's current status, and the completion dates of all major delivery milestones.
 - c. Description and map designating the project location

- d. An explanation of greenhouse gas reducing features of the project such as project components that improve air quality and reduce greenhouse gas emissions along a specific corridor, surrounding land use density, housing and employment centers, transit- oriented development/sustainable communities strategy projects, active transportation infrastructure and other features, to the extent available. No GHG emissions reduction quantification is required, but can be acknowledged, if available.
- e. An explanation of expected ridership benefits of the project when constructed, including how the project supports better integration of transit services in the region among modes and providers if applicable.
- f. If applicable, an explanation of how some or all of the project is expected to provide direct, meaningful, and assured benefits to a disadvantaged community, low-income communities or low-income households as defined by SB 535 and AB 1550.

ZETCP Capital

If an agency is requesting allocation for funding for **ZETCP capital projects**, they shall include for each requested ZETCP capital project:

- a. A summary or fact sheet (one- to two-page) that includes the following elements:
 - i. Implementing agency or agencies
 - ii. Project title
 - iii. Dates for the start and end of each project phase
 - iv. Summary of project scope
 - v. Total project costs, including identification of the amount of funding used for project management as budgeted for the agency or agencies involved (inclusive of RTPA project management)
 - vi. Identification of the source, type and amount of all funding
- b. A detailed project schedule, including the project's current status, and the completion dates of all major delivery milestones.
- c. Project Location – provide a map for each of the following, where relevant:
 - i. Project location denoting the project site. Provide a KML file showing project location(s) and impacted transit lines.
 - ii. In addition to showing where housing exists, provide information on housing density and planned/zoned/permitted/etc. housing density. This information may come from planning documents and/or zoning code if other approaches are not readily available.
 - iii. In addition to illustrating existing employment centers, provide information on employment density, mix of employment types, and planned future employment land uses. This information may come from planning documents and/or zoning code if other approaches are not readily available.
 - iv. Planned and existing active transportation infrastructure.
- d. An explanation of greenhouse gas reducing features of the project. For all construction projects, agencies are required to submit a copy of the California Air Resources Board (CARB) Quantification Methodologies (QMs) and Calculator Tools for estimating greenhouse gas (GHG) emission reductions and co-benefits identified in Attachment 2.
- e. At the time of the Allocation Package submission, applicants are required to submit a job co-benefit modeling tool, which is based upon a co-benefit assessment methodology

developed by CARB. This tool can be found here:

<https://ww2.arb.ca.gov/resources/documents/ci-methodologies>

- f. An explanation of how some or all of the project is expected to provide direct, meaningful, and assured benefits to a disadvantaged community, low-income communities or low-income households as defined by SB 535 and AB 1550. Agencies must evaluate the criteria detailed by CARB (see Attachment 1) and complete the CARB benefit criteria table in Attachment 3, to determine whether the project meets criteria for providing direct, meaningful, and assured benefits to a disadvantaged community, low-income community, and/or low-income households and address a community need pursuant the CARB's Funding Guidelines, and document the manner in which all or part of the project does so. If an agency plans to engage in additional efforts to consult with disadvantaged or low-income stakeholders as part of project development, a specific task and budget for the proposed activities should be included in the project application.
 - i. It is a goal of programs using GGRF resources to maximize benefits to disadvantaged communities and low-income communities and households. Pursuant to the requirements of SB 535, as amended by AB 1550, the overall California Climate Investments Program funded with Cap-and-Trade auction proceeds must result in: (1) a minimum of 25% of the available moneys in the GGRF to projects located within, and benefiting individuals living in, disadvantaged communities, (2) an additional minimum of 5% to projects that benefit low-income households or to projects located within, and benefiting individuals living in, low-income communities located anywhere in the state, and (3) an additional minimum of 5% either to projects that benefit low-income households that are outside of, but within a 1/2 mile of, disadvantaged communities, or to projects located within the boundaries of, and benefiting individuals living in, low-income communities that are outside of, but within a 1/2 mile of, disadvantaged communities.
 - ii. Information on California Climate Investments to Benefit Disadvantaged Communities with background on SB 535, AB 1550 and the CalEPA California Communities Environmental Health Screening Tool 4.0 (CalEnviroScreen), can be found at: <https://calepa.ca.gov/EnvJustice/GHGInvest/>
- g. Identification of whether the entire project, or only certain components, address AB 1550 benefits, and identification of the portion of the budget related to those components.
- h. An explanation of expected ridership benefits of the project when constructed, if any.

Transit Operations Funding

If an agency is requesting an allocation of funding for transit operations for one or more of the STA-eligible transit operators in its jurisdiction, it shall include the following information for each operator covered by its request:

1. Name of Transit Operator
2. 2022-23 Ridership for the Operator and Operator's Percent of Region's Total Ridership
3. Amount of Funding Requested, by source (TIRCP or ZETCP) and Budget Year
4. List of Specific Activities Funded by the Request, quantified where possible:
 - a. Amount of service being paid for by the additional funding expressed in both revenue service hours and by nature of service retention, restoration or increase invested in (e.g. preventing a reduction in frequency on one or more routes (or systemwide), frequency increases on particular routes or launch of new routes made possible by the funds). Costs involved in maintaining current

operations may include those necessary for ensuring safety and state of good repair of the vehicles and infrastructure necessary to operate service and shall be identified with respect to the current service level they are protecting. In some regions, a different STA-eligible operator may be better able to implement increased or restored service levels than the original operator. This flexibility is allowed and should be noted in the project description when utilized.

- b. Identification of operating expenses invested in increased safety and security measures
- c. Identification of operating expenses that are intended to increase ridership, including those that fund actions to improve coordination of routes and schedules

5. Identification of benefits to transit dependent riders of activities funded by the request

- D. **A summary Excel table including the proposed uses of TIRCP and ZETCP funds by fiscal year of availability**, up to the levels presented in Section 3 above. Uses shall be subdivided between funding for capital projects and funding for operations expenses, with each project and its implementing agency specifically identified, and each operator that will receive operations funding also specifically identified. An Excel template to be used in submitting this required information will be available on the CalSTA website within the Subject Area page dedicated to SB125 Funding. This table should contain data that matches the information submitted in the **Allocation Package Detailed Project Description**. The data table shall indicate the funding year from which funds are encumbered to the project or operating expense by the RTPA. Actual expenditure of funds may be in that year or a future year, as necessary for the project or operation.
- E. Agencies must also submit **regionally representative transit operator data** in coordination with transit operators providing service within the jurisdiction of the regional transportation planning agency. Regionally representative operator data is expected to include all State Transit Assistance-receiving agencies that are also direct reporters to the National Transit Database (NTD), as well as any additional agencies that are expected to receive either operating or capital project funding from the SB 125 funds. Exceptions are noted below. This data collection is aligned with some of the expected data needs for the Transit Transformation Task Force. For agencies to receive an allocation of funds in the 2023-24 fiscal year, the transit operator data must be submitted by December 31, 2023. CalSTA and Caltrans will review the data submissions for completeness, understanding the quality of the data may vary between operators. RTPAs are not required to confirm the data accuracy compiled from their transit operators. If the transit operator data does not meet the following requirements or is incomplete, agencies will have an opportunity to remedy their submission and receive access to the funding after the requirements are met, by no later than April 30, 2024. The regionally representative transit operator data shall include, but is not limited to:
 - i. **Existing fleet and asset management plans by transit operators.** Innovative Clean Transit Plan developed for CARB will be considered an already-responsive component of this requirement. Operators that are required to submit Asset Information Module data to the FTA's National Transit Database (whether on their own or as part of a group plan) should confirm the last time period for which data was submitted, and whether they submitted their data as part of a group plan. If such data is already submitted to the NTD by Caltrans, the most recent submission should be noted and referenced. If the STA-eligible transit operators within an RTPA's jurisdiction have operator-specific fleet and/or asset management plans developed for their own management purposes, or for compliance with FTA Capital Investment Program requirements, the most recent version of such plans should be submitted.

- ii. **Revenue collection methods and annual costs involved in collecting revenue for each transit operator and regional transportation planning agency involved, by payment instrument.** The methods (payment instruments) of revenue collection should be noted and described for all operators covered by the data submission requirements, including reference to use of cash fareboxes, transit passes and tickets available for sale at different locations and in different media, use of mobile ticketing and/or use of smart cards or contactless payment. Information on revenue collection costs shall also be submitted for those operators or regional agencies that are able to identify specific costs in their operating or capital budgets associated with such revenue collection costs. Annual cost should be related to annual revenue for each STA-eligible transit operator that has relevant data to report. For operators that have no identifiable expenses and are not NTD reporters, fare revenues shall still be submitted for the most recent fiscal year in question. For regional agencies that have revenue collection costs without collecting fare revenues directly, the revenue collection costs should be reported by payment instrument, along with an indication of which operators are served by such revenue collection efforts.

1. The dataset shall include, for each transit operator or regional transportation planning agency involved in revenue collection (as applicable):
 - a. Total cost of revenue collection and total revenue collected for the most recent fiscal year
 - b. Cost of revenue collection by payment instrument (where available, even if only for certain instruments and not all) and total revenue collected by those same payment instruments, for the most recent fiscal year.
2. Planned capital costs related to fare collection in the next 4 years, if any are planned (including those within expected transit vehicle or other procurements).

- iii. **A statement of existing service plan and planned service changes through the end of 2023-24, and schedule data in General Transit Feed Specification (GTFS) format.** The goal of this data submission is to provide up to date representation of schedules by transit operator. Nearly all transit agencies of the state are providing their data in GTFS format on a regular basis, and are required to start doing so by FTA regulations by 2024. Such data is already visible to the public and to state agencies as indicated below. Compliance with these statutory requirements may be met by each operator confirming that their current schedule data is correct (an accurate representation of the service that the customer will see in operation), and that future service changes will be translated into an updated GTFS format on a timely basis. If a service change is planned during FY 23-24, an estimated date for submission of GTFS data should be indicated.

A brief summary of the existing service plan and changes to the levels of service planned by operator, at a level that is representative of the larger planned changes but does not need to cover minor changes, shall accompany the allocation package. Major frequency changes, or addition or discontinuance of routes, should be reflected, but not minor routing or scheduling changes. In addition, changes in total amount of revenue service hours planned for this current fiscal year shall be reported, along with the timeframe for such a change.

1. Existing service is assumed to have been described in the agencies most recent GTFS feed / GTFS Realtime feed. A list of agencies and

associated

feeds can be found at <https://data.ca.gov/dataset/cal-itp-gtfs-ingest-pipeline-dataset/resource/e4ca5bd4-e9ce-40aa-a58a-3a6d78b042bd>. If this is in error, please contact hello@calitp.org. More general information specific to reporting in GTFS may be found at <https://dot.ca.gov/cal-itp/california-minimum-general-transit-feed-specification-gtfs-guidelines>.

2. For the proposed service plan, the ideal format is a GTFS feed, representing, at a minimum, proposed weekday, Saturday and Sunday service, planned scenario. Otherwise, we will accept frequency or new line-based changes. (i.e., line X goes from every 20 minutes to every 10 minutes during peak periods, defined as 6am-9am and 4pm to 7pm).
 3. The phasing plan for any proposed service changes.
- iv. **Expenditures on security and safety measures.** This data should be submitted by those agencies that have current or changed levels of expenditure that are specific to security (including cybersecurity) and safety measures, if applicable to the agency or operators covered by the report. This information is expected to highlight those regions and agencies that are expending significant funding, in order to consider this in the context of the Transit Transformation Task Force and to consider the role such spending may play in restoring and increasing ridership. Not all agencies and operators are expected to have specific data in this area.
 - v. **Opportunities for service restructuring, eliminating service redundancies, and improving coordination amongst transit operators, including, but not limited to, consolidation of agencies or reevaluation of network management and governance structure.** RTPAs with efforts involving these activities across their region or involving specific operators shall provide a summary of the opportunities they are pursuing or have acted upon, including any reports on such opportunities.

Technical assistance in addressing the required contents of the Initial Allocation Package and any future updates may be requested by emailing the SB 125 e-mail address at SB125transit@calsta.ca.gov. Assistance may be provided by CalSTA, Caltrans or CARB, depending on the nature of the specific question.

Applicants are reminded that while initial allocation packages are due by December 31, 2023, they may submit updates to such packages on a rolling basis that CalSTA anticipates reviewing on a 30- to 60-day timeline for approval of additional allocations of funding, up to the limit available for the RTPA at the relevant point in the program.

RTPAs are also required to make publicly available (i.e., posted online) a summary of monthly ridership data, consistent with the data submitted to the FTA's NTD, from all its transit operators and should cover the time period starting on July 1, 2022, through at least June 30, 2028. The monthly reports should include ridership data for each mode of public transportation service that the agency operates. This information will provide the public with monthly trends in ridership and service supplied throughout the year, and also allow for a comparison of ridership recovery compared to this same time last year. Caltrans will provide all RTPAs with a summary report each month that meets the requirements of this statutory provision, drawn from the data reported to the National Transit Database. The data will be drawn from the NTD at: [Complete Monthly Ridership \(with adjustments and estimates\) | FTA \(dot.gov\)](#). RTPAs are required to post a link to this report and data in a manner easily accessed by the public, so that ridership trends within their region can be easily reviewed, in order to receive approval for their allocation packages. For RTPAs with transit operators who do not report monthly data to the NTD, Caltrans will include the most recent annual ridership numbers provided to the NTD. RTPAs may publish

additional ridership data for agencies that do not report monthly to the NTD at their discretion, in order to allow public understanding of the changes in ridership experienced over the SB 125 funding time period.

Unrelated to the Allocation Package submissions, agencies are required to submit and receive approval of a one-time, long-term financial plan by June 30, 2026, that addresses the approach to sustain the region's transit operations absent additional discretionary or nonformula state funding to maintain eligibility for future TIRCP funding in the 2026-27 fiscal year and beyond. *This plan will be analyzed and reviewed for completeness.*

Each long-term financial plan shall include, but is not limited to:

- I. Demonstration of the implementation of ridership retention and recovery strategies, including, but not limited to, policies that prioritize safety and cleanliness and streamlined coordination between transit operators, such as schedule coordination, reduced boarding times, operational management, and site sharing, to improve rider experience.
- II. A five-year forecast of operating funding requirements with detail on all sources of funding proposed for operations, including any new local and regional funding sources being pursued and the progress and improvements implemented since the last submitted regional short-term financial plan.

Technical assistance as it relates to the development of long-term financial plans may be offered from CalSTA and/or Caltrans. RTPAs are expected to utilize existing plans and documents that address the requirements of the long-term financial plan where possible, including the use of supplemental materials or addenda that address the long-term plan requirements and reference back to their existing plans as applicable. CalSTA analysis and review for completeness will only extend to content required by the provision of SB 125. Additional guidance will be developed and articulated in future updates to these guidelines, per the legislative intent of SB 125.

7 Approval and Programming

Once an agency's Initial Allocation Package is received, along with verification that monthly ridership data as required by statute is available on each regional agency's website, CalSTA will review and analyze the submitted documents for completeness and for project eligibility with a commitment to facilitate these funds to projects in an expeditious manner and not infringe on the local decision-making processes that determined the specific projects proposed for funding. If all projects are eligible and the documentation is complete, CalSTA will notify the RTPA that its package is approved, publish the information on its SB125 Transit Formula Program subject area page, and authorize disbursement of applied-for funds to the RTPA. If Initial Allocation Packages are incomplete, RTPAs will be promptly notified and allowed to address areas of incompleteness. If any projects are found to be ineligible, RTPAs will be provided an opportunity to choose between either remedying the ineligible project (or replacing it with another) prior to having the entire package approved, or advancing all projects that are eligible and addressing the ineligible project in a future Updated Allocation Package. CalSTA will maintain a Program Allocation Report that will incorporate all approved projects (both capital and operating) that will be updated in any quarter during which additional approvals of Initial Allocation Packages or Updated Allocation Packages have been made.

Agencies are not required to fully apply for all available funding at the time of Initial Allocation Package submission. Unrequested monies, or the request to program interest earned on deposited funds that have not yet been disbursed to implementing agencies, may be requested in a future Updated Allocation Package. If an agency chooses to request previously unrequested funding or reprioritize funding between projects (including the addition or deletion of a project from their approved project list), an Updated Allocation Package shall be submitted for approval, including a Summary of Changes section immediately after the cover letter authorizing submission, and any updates to the project information in the document

relative to the request. Such documents will be reviewed and analyzed upon receipt for completeness and project eligibility with a commitment to facilitate these funds to projects in an expeditious manner and not infringe on the local decision-making processes that determined the specific projects proposed for funding, with the approved changes included in the quarterly updates to the Program Allocation Report. Notification will be provided to each submitting agency within 30 to 60 days of submission of an Updated Allocation Package regardless of whether the next quarterly Program Allocation Plan has been published.

8 Project Delivery and Reporting

To the extent that recipients specify existing TIRCP projects that already have competitive TIRCP funding awards, CalSTA and Caltrans will work with each project sponsor to update project program supplements to reflect the use of these supplemental resources on the project under its delegated authority from CalSTA. The first year of funding for TIRCP and the ZETCP is already available for distribution once required materials are submitted and is expected to be fully encumbered or expended and liquidated by June 30, 2028. FY23-24 funds for TIRCP and the ZETCP must be disbursed to RTPAs by this deadline. Once received by the RTPA there is no deadline for the expenditure of funds. Agencies may spend SB 125 funds in any order relative to other state, federal and local funds.

As a condition of ongoing disbursement of requested SB 125 funds, the RTPAs must submit to CalSTA an Annual Report documenting the activities and progress made toward implementation of the projects and operating expenditures, which includes total SB 125 expenditures to date and total amount remaining. Recordkeeping and reporting requirements will apply through the life of the projects.

As previously noted, recipients must deposit funds into a dedicated bank account that will hold only SB 125 funds. If a separate account is not possible, the agency may show documents of a line item or subaccount dedicated to SB 125 funds. These funds must also be spent on eligible projects and will be accounted for when an agency submits its required Annual Report.

A reporting template will be distributed prior to the first annual report being due by December 31, 2024.

A final delivery report for completed capital projects may also be required, to provide notification of the completion of the project and confirmation of its placement into service. Additional guidance may be developed and articulated in future updates to these guidelines, per the legislative intent of SB 125, and may include the development and distribution of a final delivery report template in the future.

Consistent with CARB's Funding Guidelines, local agencies are required to report on job co-benefits, in addition to all other reporting requirements, for funding associated with the ZETCP. Job co-benefits refer to California jobs supported, not created, by California Climate Investments. Jobs supported by California Climate Investments include direct, indirect, and induced employment.

At the time of the Allocation Package submission for the ZETCP, agencies are required to submit a job co-benefit modeling tool, which is based upon a co-benefit assessment methodology developed by CARB. Once an awarded project has been implemented, funding recipients will also be required to report actual (not modeled) jobs data via the semi-annual reporting process. Note that these requirements are only for the ZETCP and are not necessary for the SB 125 TIRCP funding. Projects accessing funding from the ZETCP may also be required to submit reporting information related to greenhouse gas reductions and priority population benefits in accordance with the CARB's Funding Guidelines (see Attachment 1).

Implementing agencies should note that additional Project Outcome Reporting may be required for TIRCP or ZETCP capital projects. Caltrans may provide assistance through Cal-ITP on scheduling, real-time information and payments to streamline reporting requirements.

The State of California has the right to review project documents and conduct audits during project implementation and over the life of the project. Caltrans or another State agency may audit a sample of SB

125 projects to evaluate the performance of the project, or compliance with state and federal laws and regulations, contract provisions; and program guidelines, and whether project deliverables (outputs) and outcomes are consistent with the project scope, schedule, and benefits described in the Allocation Package. A report on the projects audited must be submitted by the auditing agency to CalSTA.

In addition, agencies that receive ZETCP funding under this program shall submit a report to CalSTA, no later than October 31, 2024, and annually by October 31st of subsequent years, that includes the following information:

- a. How much funding is to be used for operating costs, if any.
- b. The number, type, date, and location of zero-emission buses, trains or other vehicles purchased, if any.
- c. The number, type, date, Open Charge Point Interface (OCPI) data, and location of electric charging stations or hydrogen fueling stations purchased and installed, if any.
- d. The nameplate capacity of installed equipment in kilowatts for electric charging stations and kilograms per day for hydrogen fueling stations, if any.
- e. The total costs and the source of funding for vehicles and equipment purchased using these funds.

Additional guidance related to the ZETCP annual report will be provided at least six months before its required submission.

9 Project Administration

Projects awarded funding from SB 125 are expected to document and publicize the TIRCP and ZETCP in proper context when developing press releases and board documents, or in hosting public events such as project groundbreakings. References should be made to TIRCP, ZETCP, the California State Transportation Agency as the program sponsor, and the state programs as fund sources, as applicable, in order to ensure transparency regarding the funding of the projects. Additional details may be provided.

Agencies must encumber and expend monies consistent with State law and ensure that GGRF monies are utilized consistent with the expenditure record submitted by CalSTA and required by SB 1018. A determination that use of GGRF monies is not consistent with the expenditure record and does not further the purposes of AB 32 may occur during legal proceedings or during an audit or program review conducted by the Bureau of State Audits, Department of Finance, a third-party auditor, or CARB. Depending on the outcome of those proceedings or review, agencies may be required to return monies to the state if expenditures are not consistent with the statutory requirements (such as not furthering the purposes of AB 32).

If a short-term financial plan does not meet the content and completeness requirements outlined in section 6, or if specific projects described do not meet eligibility requirements, agencies will have an opportunity to remedy their plan and receive access to the funding after the requirements are met.

Audits and on-site monitoring can take place at any time at the discretion of CalSTA, without prior warning given to the agency. CalSTA has the right to audit the project records, including technical and financial data of the Project Applicant, the Implementing Agency, and any consultant or sub-consultants at any time after award, during the course of the project and for three years from the date of the final closeout of the project, therefore all project records shall be maintained and made available at the time of request.

The state may terminate the disbursement of funds if it learns of or otherwise discovers that there are allegations supported by reasonable evidence that a violation of any state or federal law or policy by the recipient which affects performance of this funding, or any other grant agreement or contract entered into with the State. If funding disbursement is terminated, or project approval revoked, the

agency may be required to fully or partially repay funds from the TIRCP or ZETCP.

Attachment 1: CCI Funding Guidelines for Administering Agencies **(applies to ZETCP Recipients Using GGRF Funds)**

Investments to Benefit Disadvantaged Communities and Low-Income Communities and Households

The California Air Resources Board (CARB) released the "Funding Guidelines for Agencies Administering California Climate Investments" (Funding Guidelines) on August 30, 2018.

The 2018 Funding Guidelines provide flexibility in implementing a diverse set of investments while maintaining transparency of outcomes and ensuring meaningful community benefits from these investments. These guidelines align with the Legislature's priorities found in [AB 398](#) and Fiscal Year (FY) 2017-18 appropriations. These guidelines reflect the increasingly important role of California Climate Investments in facilitating the reduction of greenhouse gases while also reducing air pollution, helping communities adapt to the impacts of climate change, and providing meaningful benefits to disadvantaged communities, low-income communities, and low-income households (also referred to as "[priority populations](#)"), among other statutory requirements.

CARB collaborates with agencies that administer California Climate Investments programs to develop individual targets for each program to drive investments that achieve direct and meaningful benefits to [priority populations](#) and help ensure that [statutory requirements](#) are met, which are described in AB 1550.

Additional information can be found at the following CARB websites:

<https://ww2.arb.ca.gov/resources/documents/cci-funding-guidelines-administering-agencies>

Attachment 2: Quantification Methodology and Co-Benefit Assessment Methodology

CCI Quantification and Reporting Materials

Administering agencies using ZETCP GGRF funding for capital expenditures must use the Funding Guidelines with the resources provided by CARB to develop effective programs and demonstrate compliance with program requirements.

Resources include Quantification Methodologies (QMs) and Calculator Tools for estimating greenhouse gas (GHG) emission reductions and co-benefits; Benefit Criteria Tables (BCTs) for determining benefits to priority populations; and Reporting Templates for reporting outcomes.

CARB staff developed the [TIRCP QM](#) and associated [Calculator Tool](#) to provide guidance for estimating the GHG emission reductions and selected co-benefits for each proposed project type. The calculator tool automates methods described in the QM document, outlines documentation requirements, and provides a link to a step-by-step user guide with project examples. Projects will report the total project GHG emission reductions and co-benefit estimated using the TIRCP Calculator tool as well as the total project GHG emission reductions per dollar of GGRF funds.

The TIRCP Calculator Tool will be used for most ZETCP capital projects, and also for developing quantification estimates for new TIRCP capital projects using SB 125 funds.

Using many of the same inputs required to estimate GHG emission reductions, the TIRCP Calculator Tool will estimate the following co-benefits and key variables from TIRCP projects

- ROG emission reductions (lbs),
- NOx emission reductions (lbs),
- PM2.5 emission reductions (lbs),
- Diesel PM emission reductions (lbs),
- Passenger VMT reductions (miles),
- Fossil fuel use reductions (gallons),
- Fossil fuel energy use reductions (kWh),
- Passenger travel cost savings (\$), and
- Energy and fuel cost savings (\$).

While many ZETCP and TIRCP projects will use the TIRCP calculator tool, there are some project types that may not be covered by a single tool. CARB staff have developed the ZETCP QM by compiling the calculator tools from TIRCP, LCTOP, the Affordable Housing and Sustainable Communities (AHSC) program, the Low-Income Weatherization Program (LIWP), and the Low Carbon Fuel Production (LCFP) Program. The LIWP calculator can be used to calculate the benefits from solar panel and microgrid installations. The LCFP calculator can be used to calculate the benefits from alternative fuel generation in either a new facility or an expanded, existing facility.

All CARB co-benefit assessment methodologies are available at:
<https://ww2.arb.ca.gov/resources/documents/cci-methodologies>

Reporting templates are developed specifically for each program within California Climate Investments. These templates are used by TIRCP staff to report on outcomes from all projects funded by TIRCP, and are expected to also be used to report on outcomes for ZETCP GGRF-funded projects. Additional quantification tools will be identified by CARB for ZETCP project types that are not covered by current quantification tools, generally

utilizing select tools used by existing GGRF programs.

Additional information can be found at the following CARB website:

<https://ww2.arb.ca.gov/resources/documents/ci-quantification-benefits-and-reporting-materials>

Co-benefit Assessment Methodology

California Climate Investments support the State's climate change goals and provide many additional benefits to individuals, households, businesses, and communities. These "co-benefits" include social, economic, and environmental benefits. CARB provides guidance on quantification methods and reporting to administering agencies. CARB contracted with the University of California, Berkeley (UC Berkeley) to help research and develop methods for evaluating project co-benefits. Guidance on using the co-benefit assessment methodologies is contained in [CARB's Funding Guidelines](#).

The co-benefits were prioritized based on administering agency input and broad applicability to California Climate Investments programs. UC Berkeley first reviewed the scientific data to determine if methods could be developed and summarized the findings in literature reviews. Next, UC Berkeley and CARB developed Co-benefit Assessment Methodologies where feasible. CARB solicited public comment on draft versions in Spring 2018 prior to posting final Co-benefit Assessment Methodologies. CARB may review and update assessment methodologies periodically based on new or evolving project types; new legislation; available resources; new scientific developments or tools, or modifications in the analytical tools or approaches upon which the methodologies were based; or input from administering agencies or the public.

The California Air Resources Board is updating the Co-benefit assessment methodology. See the following website for the final methodology.

<https://ww2.arb.ca.gov/resources/documents/ci-methodologies>

Attachment 3: Benefit Criteria Tables

CCI Benefit Criteria Tables

ZETCP will use the Sustainable Transportation [Benefit Criteria Table](#) developed by CARB to ensure that programs meet the minimum levels of investments to projects that benefit residents of disadvantaged communities, low-income communities, and low-income households, collectively referred to as “priority populations”.

All projects counting toward the statutory investment minimums must be located within an identified community and benefit individuals living within that community, or directly benefit residents of low-income households anywhere in the State. Administering agencies must determine if a project meets the criteria for providing direct, meaningful, and assured benefits to priority populations using the following evaluation approach:

Step 1: Identify the Priority Population(s). Be located within a census tract identified as a disadvantaged community or low-income community, or directly benefit residents of a low-income household.

Step 2: Address a Need. Meaningfully address an important community or household need for the disadvantaged community, low-income community, or low-income household.

Step 3: Provide a Benefit. Using the evaluation criteria, identify at least one direct, meaningful, and assured benefit that the project provides to priority populations. The benefit provided must directly address the identified need.

Only investments that meet these criteria will be counted toward achieving the statutory investment minimums identified for priority populations. Administering agencies can fund projects that otherwise provide meaningful benefits, but do not meet these criteria; however, those projects will not be counted toward investment minimum.

SB 125 PROGRAM SUPPLEMENT TO COOPERATIVE AGREEMENT

TCAG Agreement No. _____

This Program Supplement ("Program Supplement") is made and entered into on _____, by and between the _____ (the "SPONSOR") and the **TULARE COUNTY ASSOCIATION OF GOVERNMENTS**, acting as the Regional Transportation Planning Agency for Tulare County ("TCAG"). The SPONSOR and TCAG are each a "Party" and together are the "Parties" to this Program Supplement.

This Program Supplement hereby incorporates the "SB 125 Cooperative Agreement" for SB 125 Program funding that was entered into between the SPONSOR and TCAG on _____, 2024 and is subject to all terms and conditions thereof.

This Program Supplement is executed under authority of TCAG Resolution No. _____, dated _____.

The purpose of this Program Supplement is to document TCAG's approval of funding from the SB 125 Program for SPONSOR'S proposed project identified as _____ (the "Project"). The scope of said Project, including its costs and schedule, are shown on the attached Attachment "A."

Covenants of SPONSOR

- 1.1 By entering into this Program Supplement, SPONSOR agrees that it will only proceed with work authorized for specific phase(s) of the Project with written "Authorization to Proceed" or other TCAG approval and will not proceed with future phase(s) of the Project(s) prior to receiving a written "Authorization to Proceed" or other TCAG approval.
- 1.2 SPONSOR will advertise, award, and administer the Project(s) as necessary and in accordance with SPONSOR standards.
- 1.3 Contract award information, if any, shall be submitted by SPONSOR to TCAG within 60 days after any Project contract award.
- 1.4 Failure to submit contract award information in accordance with section 1.3 will cause a delay (without interest or penalties) in TCAG's processing of invoices for the construction phase of the Project.
- 1.5 If no costs have been invoiced by SPONSOR for the Project for a six-month period, then SPONSOR agrees to submit to TCAG for each Project phase a written explanation of the absence of Project(s) activity along with target billing dates and target billing amounts.

IN WITNESS WHEREOF, the undersigned Parties have executed this Program Supplement on the day and year first written above.

TULARE COUNTY ASSOCIATION OF GOVERNMENTS

By: _____
TCAG Executive Director

Attest: _____
TCAG Finance Director

[NAME OF SPONSOR (City or TCRTA)]

By: _____
Its [Title]

Attest: _____
[Title]

Jlk/10-21-2024/20241704/2259208.docx

SB 125 PROGRAM SUPPLEMENT TO
COOPERATIVE AGREEMENT
TCAG Agreement No. _____

Attachment A

Project Name _____

Project Scope

Project Schedule

Sources and Use of Funds

EXAMPLE

Funding Source	ATP	MR	City/County
PA&ED	25,000	15,000	
PS&E	63,000	37,000	
ROW	6,000	4,000	
Construction	426,000	251,000	
Total Funding	520,000	307,000	

AGENDA ITEM V-A

August 19, 2024

Prepared by Giancarlo Bruno, TCAG Staff

SUBJECT:

Action: Adoption of Resolution: Approval of Revised SB 125 Project List

BACKGROUND:

In July 2023, the California State Legislature approved SB 125, which amended the Budget Act of 2023 to appropriate \$4 billion of General Fund to the Transit and Intercity Rail Capital Program (TIRCP) over the next two (2) years, as well as a total of \$1 billion from the Greenhouse Gas Reduction Fund (GGRF) and Public Transportation Account (PTA) over four (4) years to establish a new Zero-Emission Transit Capital Program (ZETCP). The program is administered by the California State Transportation Agency (CalSTA).

TCAG is due to receive approximately \$56 million through the life of the program, with just over \$27 million expected to be disbursed in its first year. The TCAG board approved the initial SB 125 Project List at its December meeting. Staff transmitted TCAG's SB 125 Initial Allocation Package to CalSTA on December 28, 2023, in accordance with the December 31, 2023, deadline. Since that time, revised project cost estimates and a desire by local agencies to invest heavily in the expansion of on-demand microtransit service have prompted a reevaluation of the original approved project list. Following consultation with member agencies, staff have revised the SB 125 project list to address these issues.

DISCUSSION:

Following the submission of TCAG's Initial Allocation Package for SB 125 funding, there were several subsequent developments that triggered a reassessment of the adopted TCAG SB 125 Project List: The City of Exeter chose not to pursue development of the Exeter Transfer Center at this time, construction of the Farmersville Transfer Center was impacted by significant cost increases, and an aggressive regionwide expansion of microtransit service was initiated.

As a result of these developments, TCAG staff are proposing to revise to the board-approved SB 125 Project List to reallocate funds that were previously designated for the Exeter Transfer Center to fully fund the Farmersville Transfer Center and to supplement existing funds for a 3-year microtransit pilot by Visalia Transit and a 2-year microtransit pilot by Tulare County Regional Transit Agency (TCRTA). The balance of funds for the microtransit pilots will come from reducing the SB 125 allocation to three (3) other projects: Visalia Transit charging infrastructure & zero-emission vans for on-demand service, TCRTA charging infrastructure, and the new zero-emission vehicle maintenance facility for Porterville Transit. Nearly half of the SB 125 funds anticipated by TCAG will be allocated to these three (3) projects even after the proposed reductions.

New SB 125 projects on the revised list will require a scope, schedule, budget, and evaluation of greenhouse gas (GHG) reduction benefits to be approved by CalSTA. Staff will begin preparing the requisite documentation once the revised project list is approved.

RECOMMENDATION:

Approve draft revised SB 125 Project List.

FISCAL IMPACT:

There is no fiscal impact to TCAG.

ATTACHMENTS:

1. Resolution approving SB 125 project list
2. Draft Revised SB 125 Project List **(Under Separate Cover)**

BEFORE THE
TULARE COUNTY ASSOCIATION OF GOVERNMENTS
COUNTY OF TULARE, STATE OF CALIFORNIA

In the matter of:

APPROVAL OF REVISED SB 125	)	
TRANSIT REGIONAL PROJECT LIST	)	Resolution No. 2024-XXX
FOR TULARE COUNTY, CALIFORNIA	)	

WHEREAS, the California State Legislature adopted AB 102 and SB 125 amending the Budget Act of 2023 to appropriate \$4 billion to the Transit and Intercity Capital Program (TIRCP) over the next two fiscal years; and

WHEREAS, the above-described acts of the state legislature also appropriated \$910 million of Greenhouse Gas Reduction Fund (GGRF) funding and \$190 million from the Public Transportation Account (PTA) over the next four fiscal years to establish the Zero-Emission Transit Capital Program (ZETCP); and

WHEREAS, in accordance with said acts of the legislature, the California State Transportation Agency (CalSTA) has issued final guidelines for the allocation of these funds; and

WHEREAS, the Tulare County Association of Governments (TCAG) is the designated Regional Transportation Agency (RTPA) for the County of Tulare; and

WHEREAS, \$48,611,010 in TIRCP funds and \$7,372,832 in ZETCP funds have been allocated to TCAG for the Tulare County region; and

WHEREAS, TCAG's SB 125 Project List was approved by the TCAG governing board on December 11, 2023; and

WHEREAS, TCAG's Initial Allocation Package for the SB 125 program was submitted on December 28, 2023; and

WHEREAS, subsequent developments have prompted a reassessment of project priorities and budgets; and

WHEREAS, staff have prepared the attached revised SB 125 Project List based on updated project cost estimates and input from board members and member agencies.

NOW, THEREFORE, BE IT RESOLVED that the TCAG Board hereby approves the attached revised SB 125 Project List.

The foregoing Resolution was adopted upon the motion of Member _____, seconded by Member _____, at a regular meeting on the 19th day of August 2024 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

TULARE COUNTY ASSOCIATION OF GOVERNMENTS

Rudy Mendoza
Chair, TCAG

Ted Smalley
Executive Director, TCAG

DRAFT TCAG - SB 125 - Amendment No 1

		Allocation		
	TIRCP	\$ 48,671,620	87%	
	ZETCP	\$ 7,372,833	13%	
		\$ 56,044,453		
			TCAG	\$ 9,743,358
				\$ 46,301,095 Balance
Project	Cost		VT	\$ 19,311,832 42%
Lindsay Transfer Center Cost Increase	\$ 2,000,000		TCRTA	\$ 17,989,263 39%
Farmersville Transfer Center Cost Increase	\$ 500,000		PT	\$ 9,000,000 19%
VT - Charging Infrastructure/ On Demand ZE Vans/Sedans	\$ 8,628,262			\$ 56,044,453
TCRTA - Charging Infrastructure (Transit Centers)				
Maintenance Facility Improvements	\$ 9,257,702			\$ - Balance
TCRTA - New Porterville ZE Maintenance Facility	\$ 9,000,000			
TCRTA - On Demand ZE Vans (19)	\$ 2,800,000			
VT - ZE Replacement Buses (5)	\$ 7,372,833			
TCAG Admin (0.5%)	\$ 243,358			
Cross Valley Express Bus Operations - 3 Year Pilot	\$ 7,000,000			
VT - Microtransit Operations - 3 Year Pilot	\$ 3,310,737			
TCRTA - Microtransit Operations - 2 Year Pilot	\$ 5,931,560			
	\$ 56,044,453			
	\$ -	Balance		
New Projects				
Adjusted Projects				



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

- SUBJECT:** Request For Will Serve Letter - 1065 E. Cleo Ave.
- SOURCE:** Community Development
- COMMENT:** Staff received a request for a will-serve letter to provide a second water connection service to an existing property located at 1065 E. Cleo Avenue for development of an accessory dwelling unit (ADU).
- BACKGROUND:** The property at 1065 E. Cleo Avenue (APN 262-202-027) is located in East Porterville, outside the city limits and within the City's Urban Development Boundary. It is developed with a single-family residence, with a proposed ADU under consideration by the County of Tulare. The existing residence currently receives water via an Extraterritorial Service Agreement (ESA) as an emergency water service connection through the Department of Water Resources (DWR) Emergency Connection Project for East Porterville, under which the subject property qualified as part of the East Porterville Feasibility Study Project Area. The ESA was approved on September 15, 2016. The ESA included an Irrevocable Agreement for Annexation (IAA #15-22) and a Deed Restriction for future development, which was recorded at the Tulare County Recorder's office as Record Number 2017-0061607 on October 6, 2017. The deed restriction provided that "no expansion or modification of this use, including conversion of structures or addition of habitable structures, may be permitted without approval of the City Council of the City of Porterville".
- ANALYSIS:** Pursuant to Gov. Code Section 66310, et seq., the County is required to ministerially approve a proposed ADU. Correspondingly, the City is required to approve a water service for the proposed ADU, if requested.
- ENVIRONMENTAL REVIEW:** On October 29, 2024, the Environmental Coordinator made a determination that the project is exempt from CEQA as a ministerial project as it consists solely of the approval of an individual utility service connection (CEQA Guidelines Section 15268(b)(4)).

RECOMMENDATION: That the City Council adopt the draft resolution approving the second water service connection at 1065 E. Cleo Avenue.

ATTACHMENTS:

1. Locator Map - 1065 E. Cleo Ave.
2. Site Plan
3. Irrevocable Agreement for Annex. to City of Porterville_ Recorded 15-22
4. Draft Resolution

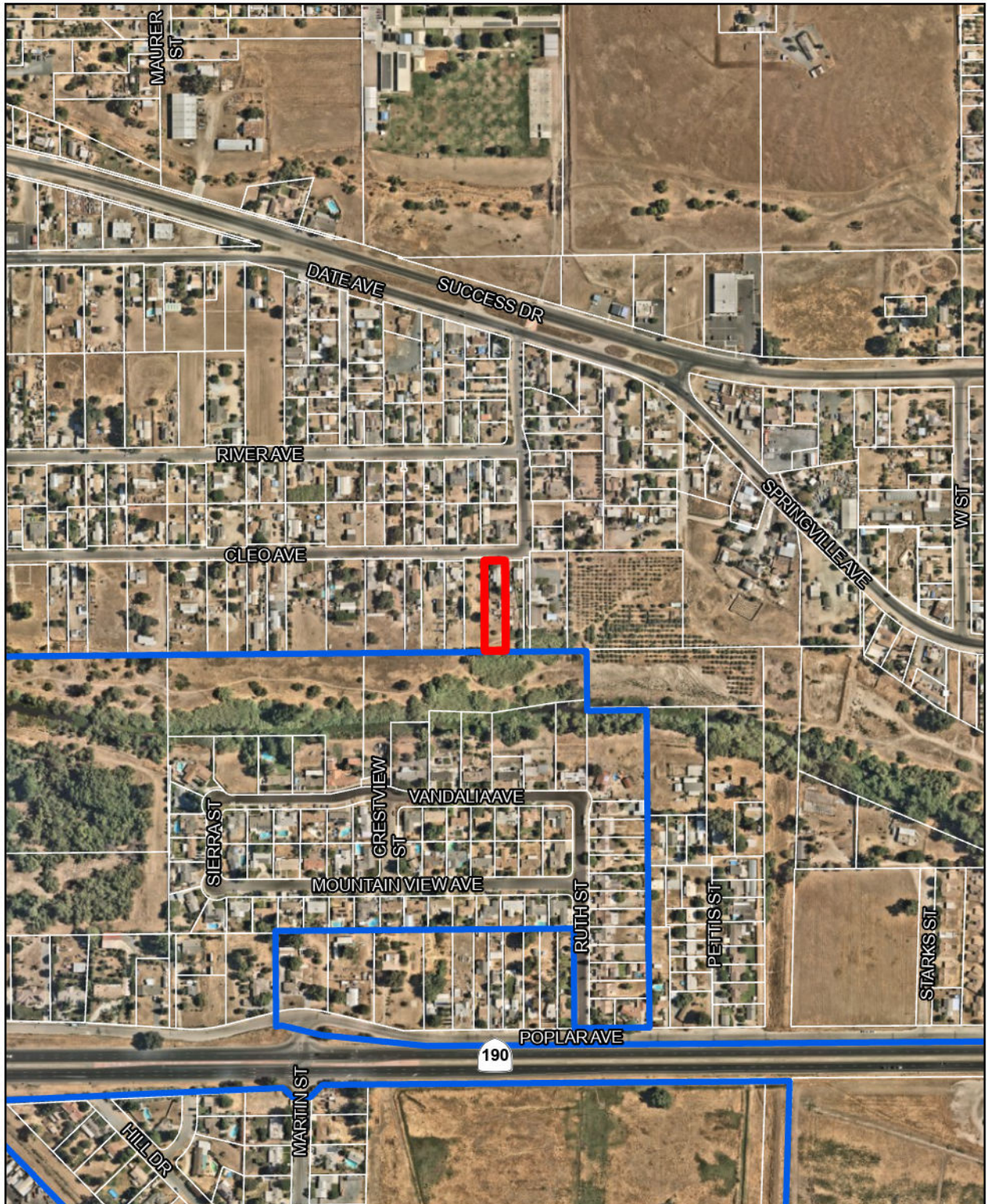
Appropriated/Funded:

Review By:

Department Director:
Claudia Calderon, Community Development Director

Final Approver: Patrice Hildreth, City Manager

Locator Map 1065 E Cleo



 Project Location

 City Limits

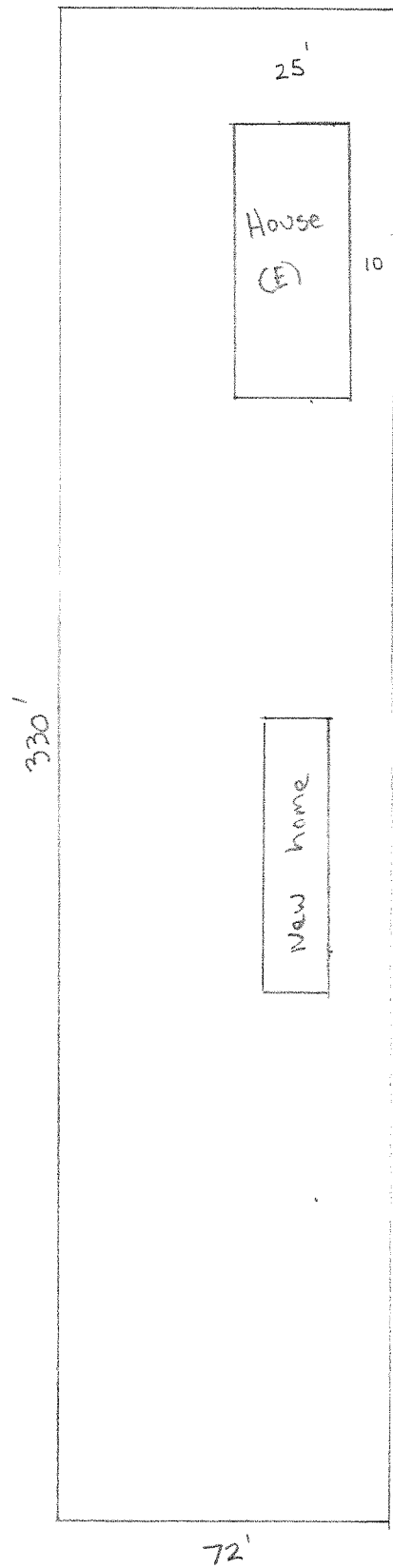
1 in = 500 feet



Date Printed: 5/24/2024 by the Community Development Department

Cleo. Ave.

1" = 40'



1065 E. Cleo Ave

Recording Requested by and
Upon Recordation return to:

City of Porterville
ATTN: Community Development Department
291 N Main Street
Porterville, CA 93257

Per Gov. Code §6103 no recording fee.
This is for the benefit of the City of Porterville.

IAA# 15-22

2017-0061607

Recorded	REC FEE	0.00
Official Records		
County of		
Tulare		
ROLAND P. HILL		
Clerk Recorder		
	NC	
08:22AM 06-Oct-2017	Page 1 of 4	

Irrevocable Agreement for annexation to the City of Porterville

This agreement is made this 15th day of September, 2016, between Shirley Sanchez hereinafter referred to as "Owner", and the City of Porterville, hereinafter referred to as "City".

Whereas, Owner is the owner of the real property consisting of approximately 0.51 gross acres located at 1065 E CLEO AVE, Porterville, California, and is further described as follows: See attached deed restriction being further described as Assessor's Parcel Number 262202027.

Whereas, Owner requires use of the City Water system and the right to connect to the existing Water main which is contiguous to said property, or will be designed and installed by the State of California Department of Water Resources; and

Whereas, Owner is willing to permit the annexation of its property to the City of Porterville; and

Whereas, the City is willing to consent to the connection of said property to the Water main on the conditions that Owner permit said annexation to the City at the earliest possible time and record the attached deed restrictions to effectively limit changes in use or capacity of the site; and

Whereas, the City may proceed with the annexation of Owner's property plus other property, but said annexation will cause delay, which delay would create a substantial hardship for Owner.

Now, therefore, Owner does agree as follows:

1. Owner hereby gives its irrevocable consent to annexation of its property to the City at such time as the annexation may be properly approved through appropriate legal proceedings, and Owner does further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications or consent prepared by the City and submitting any evidence reasonably within the control of Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of Owner to institute any litigation or judicial proceedings whatsoever to compel annexation to the City.
2. The City hereby agrees to authorize the connection of said property to the City's Water main located in Cleo Ave.

3. Concurrent with connection to utilities, the State of California, on Owner's behalf, agrees to pay a fair share of annexation fees and other costs related to infrastructure as would ordinarily be charged on the annexation of property to the City, and as outlined in the fee schedule adopted by the City.
4. In addition to fees described above, the State of California, on Owner's behalf, shall pay all fees and charges and make all deposits required by City to connect to and use the Water. Those fees shall include, but not be limited to, the following:
 - LAFCo fee: (\$121 per phase, paid separately)
 - Extraterritorial Service Agreement fee (\$150 + \$0.0136 per s.f.) = \$ 452.13Said fees shall be valid for a period of one year from the date of execution of this Agreement and shall be paid prior to the issuance of a Water connection permit. Fees paid after one year of the date of execution of this Agreement shall be subject to the fee amount in effect at that time. Owner agrees to be bound by all City ordinances, rules, and regulations respecting the Water system.
5. This agreement shall be recorded.
6. Owner executes this agreement on behalf of itself, its successors and assigns, and said Agreement shall be irrevocable without the prior written consent of both parties hereto.

Executed this 15th day of September, 2016

Owner: SANCHEZ, SHIRLEY A
752 W PIONEER AVE
PORTERVILLE CA 93257

By: Shirley Sanchez

City: Julie Phillips
Julie Phillips, Community Development Manager

The City Manager and Mayor of the City of Porterville have been authorized to execute this Agreement of behalf of the City of Porterville

[Signature]
City Manager of the City of Porterville

[Signature]
Mayor of the City of Porterville

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Tulare)
 On September 15, 2016 before me, Araceli Aguirre, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Shirley Anne Sanchez
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Deed Restriction for IAA # 15-22

1065 E CLEO AVE, Porterville CA 93257

APN 262202027 (as of April 29, 2016), as further identified by the legal description recorded in

Grant Deed: 2005-00470624 on, 5/20/2005.

The property is currently developed with residential structures, including 1 habitable units.

As a condition of the extraterritorial service agreement, no expansion or modification of this use, including conversion of structures or addition of habitable structures, may be permitted without approval of the City Council of the City of Porterville. The keeping of animals may be maintained in accordance with Tulare County Animal Control and Land Use ordinances, until one year following the date of annexation.

Connection to and use of the municipal water system is subject to all water conservation requirements imposed by the City of Porterville, as well as the requirement to abandon wells upon municipal service connection. A parcel smaller than 5 acres with a Porterville Municipal Water Service Connection shall not receive water from a private well, nor develop additional wells in the future.

Any existing deed restriction shall not be affected in any way by the document recorded herewith.

RESOLUTION NO. ____-2024

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING A SECOND SERVICE FOR MUNICIPAL WATER FOR PROPERTY
LOCATED AT 1065 E. CLEO AVENUE**

WHEREAS: The California State Water Resources Control Board, in coordination with the Department of Water Resources, conducted a feasibility study to define a long-term solution to the water-related issues in East Porterville.; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of April 19, 2016 amended the procedures for annexation and extension of municipal services via Resolution 19-2016: and

WHEREAS: The property located at 1065 E. Cleo Ave. (APN 262-202-027) qualified under the East Porterville Feasibility Study Project Area and an Extraterritorial Service Agreement (ESA) was processed on September 15, 2016; and

WHEREAS: The ESA included an Irrevocable Agreement for Annexation, IAA # 15-22, and a Deed Restriction, which document was recorded at the Tulare County Recorder's on October 6, 2017 as Record Number 2017-0061607; and

WHEREAS: The Deed Restriction outlined, "no expansion or modification of this use, including conversion of structures or addition of habitable structures may be permitted without approval of the City Council of the City of Porterville"; and

WHEREAS: The approval of an accessory dwelling unit (ADU) is a ministerial action pursuant to Gov. Code Section 66310, et seq.; and

WHEREAS: As the purveyor of domestic water in the area, the City of Porterville is obligated to provide a water service to said ADU if requested; and

WHEREAS: This project is exempt from CEQA pursuant to CEQA Guidelines Section §15268, Ministerial Projects.

NOW, THEREFORE, BE IT RESOLVED: That the City Council does hereby approve the request for a second water service for the future development of the residential dwelling unit:

1. All water service connections shall comply with all applicable codes, including but not limited to Porterville Municipal Code Section 26-2, which requires the abandonment of wells upon municipal service connection.
2. The developer/applicant shall comply with the City standard for "backflow" prevention pursuant to Resolution No. 9615.

PASSED, APPROVED AND ADOPTED this 19th day of November, 2024.

Martha A. Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

BY _____
Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Approval of Community Civic Event - Rotary Club of Porterville and Porterville Chamber of Commerce - Children's Christmas Parade – December 5, 2024 (Alternatively on December 12, 2024, in the Event of Rain)

SOURCE: Finance

COMMENT: The Rotary Club of Porterville and the Porterville Chamber of Commerce are requesting approval to hold the annual Children's Christmas Parade along Main Street on Thursday, December 5, 2024, or alternatively on Thursday, December 12, 2024, in the event of rain on December 5, from 7:00 PM to 9:00 PM.

The event organizers are requesting the following streets and sidewalks be closed from 5:00 PM to 9:00 PM (as indicated on the map):

- Main Street - from Danner Avenue to Vine Avenue
- Morton Avenue, Harrison Avenue, Thurman Avenue, Cleveland Avenue, Putnam Avenue, Mill Avenue, Oak Avenue, Olive Avenue, and Vine Avenue - from Hockett Street to Second Street
- Garden Avenue - from Main Street to Second Street
- Second Street - from Olive Avenue to Oak Avenue
- School Avenue, Belleview Avenue, North Avenue and Doris Avenue - from Sunnyside Street to Second Street

The request also includes the closure of the parking spaces on Main Street in front of the Chamber of Commerce from 6:00 AM to 9:00 PM, and in front of City Hall from 3:00 PM to 9:00 PM.

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

RECOMMENDATION: That the City Council approve the attached Community Civic Event Application and Agreement submitted by the

Rotary Club of Porterville and the Porterville Chamber of Commerce to hold the Children's Christmas Parade on December 5, 2024, or alternatively on December 12, 2024, in the event of rain, subject to the requirements and restrictions that are listed on the attached copy of the Application and Agreement, Exhibit A, Exhibit B and Exhibit C.

ATTACHMENTS: 1. Application and Agreement, Map, Exhibit A, Exhibit B, Exhibit C, Outside Amplifier Permit, and Certificate of Liability Insurance

Appropriated/Funded:

Review By:

Department Director:
Janie Rodriguez, Finance Director

Final Approver: Patrice Hildreth, City Manager

CITY OF PORTERVILLE

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



(Incomplete applications can delay permit process)

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

DO YOU HAVE? *Event Flyer?* yes *E-mail address?* kristy@portervillechamber.org *Website?* portervillechamber.org

Application date: October 17, 2024 Event date: December 5, 2024 alternate rain date: December 12, 2024

Event time: 7:00 pm - 9:00 pm

Name of Event: Children's Christmas Parade

5:00pm - 9:00pm for street & sidewalk closures

6:00am - 9:00pm closure of parking spaces in front of Chamber

3:00pm - 9:00pm closure of parking spaces in front of City Hall

Sponsoring organization: Rotary Club of Porterville, Porterville Chamber of Commerce, City of Porterville

Phone # (559) 784-7502

Address: 93 N. Main St. Ste. A, Porterville, CA 93257

Authorized representative: Kristy Martin

Phone # (559) 784-7502

Address: 93 N. Main St. Ste. A, Porterville, CA 93257

Event chairperson: Greg Meister

Phone # (661) 364-6346

Location of event Main St. from Danner to Vine; side streets for assembly and disbursement

(Location map must be attached)

Description of event: Children's Christmas Parade

Purpose of event: Community event

Non-profit organization status: 501 (c) 6

(IRS Determination)

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

Barricades (quantity): 80 Street sweeping Yes ☒ No ☐

Police protection Yes ☒ No ☐ Refuse pickup Yes ☒ No ☐

Other: _____

Parks facility application required: Yes ☐ No ☒ Attached ☐

Assembly permit required: Yes ☐ No ☒ Attached ☐

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

Appr. Deny

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

CITY OF PORTERVILLE

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

What constitutes a Community Civic Event?

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

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

Liability insurance: The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. The sponsoring organization/applicant's insurance coverage shall apply as primary to, and on a non-contributory basis with, any other available coverage of the City. The City of Porterville and Successor Agency to the Porterville Redevelopment Agency shall be named as additional insured. A Certificate of Liability Insurance and Additional Insured Endorsement sample forms are enclosed for your convenience. This original certificate and endorsement shall be submitted to the Finance Department with the application. *The council shall condition the granting of a CCE permit upon the sponsoring entity's filing with the council a policy of public liability insurance in which the city has been named as insured or coinsured with the permittee. The policy of insurance shall insure the city, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than two million dollars (\$2,000,000.00) per occurrence of bodily injury and property damage, combined single limit. (Ordinance 15-20(e) 18)*

Km Authorized Representative Initial

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

Km Authorized Representative Initials

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

Km Authorized Representative Initials

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

Km Authorized Representative Initials

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

Km Authorized Representative Initials

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

Porterville Chamber

(Name of Organization)



(Signature)

10/17/2024

(Date)

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

Sponsoring organization: Rotary Club of Porterville, Porterville Chamber of Commerce, City of Porterville

Event date: December 5, 2024 Event time: 7:00pm - 9:00pm

[illegible]

3 of 4

CITY OF PORTERVILLE

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

Name of event: Children's Christmas Parade

Sponsoring organization: Rotary Club of Porterville, Porterville Chamber of Commerce, City of Porterville

Event date: December 5, 2024

Hours: 7:00pm - 9:00pm

5:00pm - 9:00pm for street & sidewalk closures
6:00am - 9:00pm closure of parking spaces in front of Chamber
3:00pm - 9:00pm closure of parking spaces in front of City Hall

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:

Closed

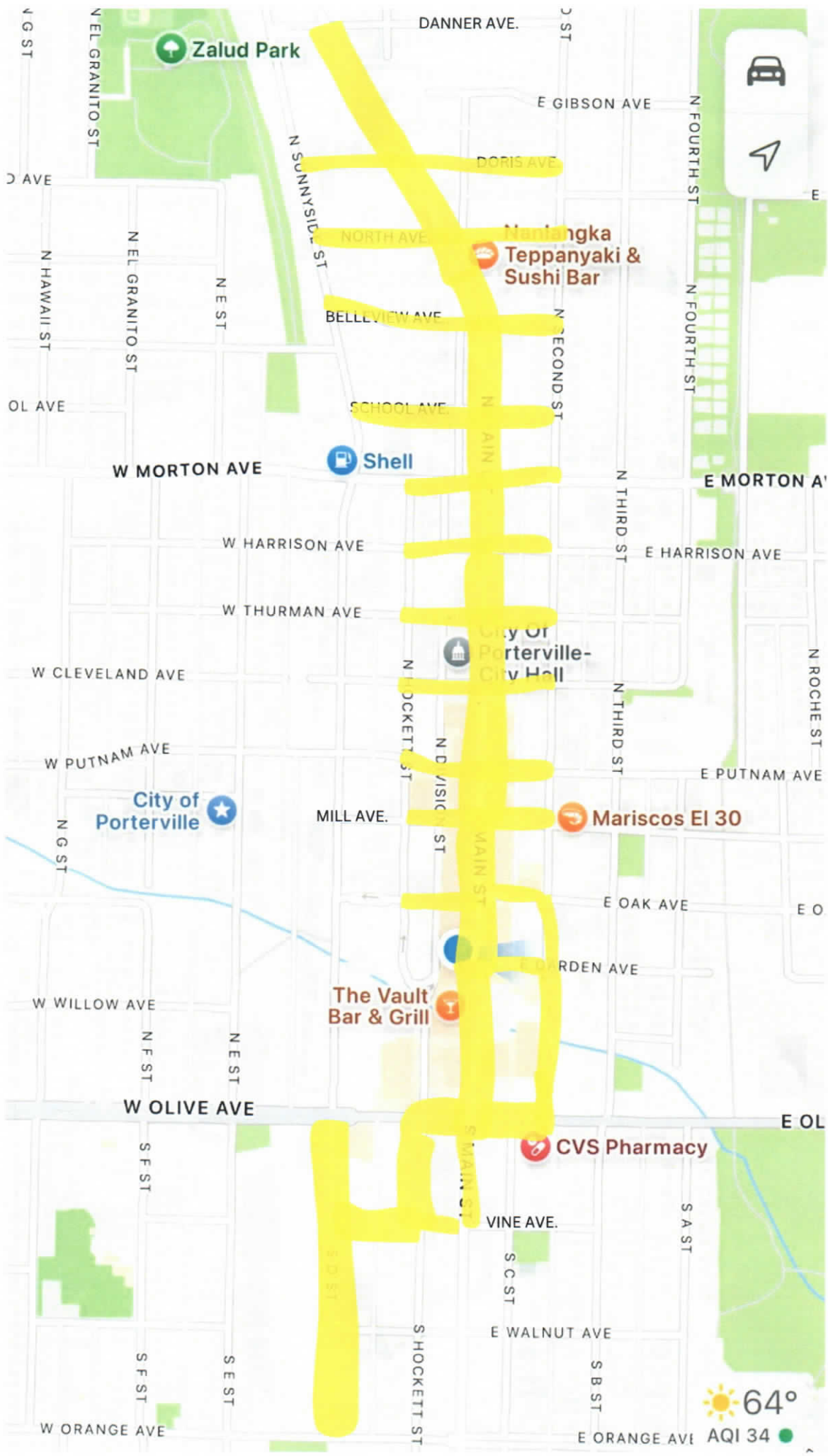
<u>Street Name</u>	<u>From which Street</u>	<u>To which Street</u>	<u>Activity</u>
Main St.	Danner Ave.	Vine Ave.	Parade route, assembly, & disbursement
Morton, Harrison, Thurman, Cleveland, Putnam, Mill, Oak, Olive & Vine	Hockett St.	Second St.	Adjacent to parade route
Garden Ave.	Main St.	Second St.	Adjacent to parade route
School, Bellevue, North, & Doris	Sunnyside St.	Second St.	Parade Assembly
Second St.	Olive	Oak St.	Parade disbursement
D St.	Olive	Orange Ave.	parade disbursement/bus pick up for bands

(Street closures from 5:00pm to 9:00pm)

<u>Sidewalks</u>	<u>From which sidewalk</u>	<u>To which sidewalk</u>	<u>Activity</u>
Main St.	Danner Ave.	Olive Ave.	Parade viewing & assembly area

(Sidewalk closures from 5:00pm to 9:00pm)

<u>Parking lots and spaces</u>	<u>Location</u>	<u>Activity</u>
Main St. (7 spaces)	Porterville Chamber, 93 N. Main St. Ste. A (6:00am-9:00pm closure)	Judge's stand
City Hall (5 northern spaces)	City Hall, 291 N. Main St. (3:00pm to 9:00pm closure)	Announcer's stand



64°

AQI 34

Requirements for Community Civic Event
Rotary Club of Porterville & Porterville Chambers of Commerce
Children's Christmas Parade
December 5, 2024

City Engineer: <i>D. Cervantez</i>	No comments.
Community Development Director: <i>C. Calderon</i>	No comments.
Public Works Director: <i>M. Knight</i>	No comments.
Fire Marshal: <i>C. Dignam</i>	Standard comments for Main St. parades, Cleveland Avenue shall not be closed, and there will be no parking in front of Fire Station 71, from Division to Hockett. Also, event Coordinator shall ensure proper Adherence to the attached outdoor Vendor and food both documents. Please see Exhibit C.
Parks and Leisure Services Director: <i>D. Moore</i>	Parks is working with the event coordinator.
Police Lieutenant: <i>M. Acevedo</i>	Please see Exhibit B.
Administrative Service Director: <i>Y. Andrade</i>	The insurance certificate and endorsement page provided by the applicant satisfies the insurance requirements for the proposed event.
Field Services Superintendent: <i>B. Spry</i>	We have already been in contact with the coordinator and will have trash containers delivered the morning of event.
Field Services Superintendent – Streets: <i>J. Baeza</i>	Street department will take care of all the road and sweeping.

Requirements for Community Civic Event

Sponsor: Rotary Club of Porterville & Porterville Chambers of Commerce
Event: Children's Christmas Parade
Event Chairman: Greg Meister
Location: Main Steet, Porterville CA
Date of Event: December 5, 2024 (7:00 p.m. – 9:00 a.m.)

RISK MANAGEMENT: Conditions of Approval

That the Rotary Club of Porterville or Porterville Chambers of Commerce provide a Certificate of Commercial General Liability Insurance Coverage of \$ 2,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Employees, Agents and Volunteers as 'Additional Insured' against all claims arising from, or in connection with, the Permitted operation and sponsorship of the aforementioned Community Civic Event.

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

CITY OF PORTERVILLE/POLICE DEPARTMENT

Community Civic Event Application

Children's Christmas Parade
December 5, 2024 / 5:00PM – 9:00PM
(Alternate Rain Date December 12, 2024)

Proposed Conditions/Requirements:

- City Council approval is required for all street closures.
- Ensure adequate barricades/barriers are used to warn motorists of non-access and prevent vehicle access to those designated areas.
- Parade Committee should meet with street vendors to coordinate rules regarding their activities, such as:
 - Staying off the parade route and crossing in front of floats or groups
 - Shall not sell silly string, snap caps or party poppers
 - Ensure each vendor has properly obtained a City business license
- Food vendors should be situated where they minimally block the sidewalk.
- Food vendors should provide inspection certificates from the Tulare County Health Department to ensure safe food products.
- Throwing candy from vehicles, floats, or any parade entry is prohibited. This results in children scampering to catch or find candy in a crowded environment, and causes others to run out into the street. This practice creates significant and unnecessary risk for parade goers. All registered parade entrants should be informed of this prohibition and efforts taken to cease this practice.
- An Outside Amplifier Permit has been requested and granted. However, event organizers shall not allow music or other amplifications to be played so loud as to unreasonably disturb the peace and good order of the business establishments or neighborhoods in the area.
- Event organizers shall coordinate all policing/traffic/parking/posting concerns with Lieutenant Orlando Ortiz and Sergeant Maria Aguillon well in advance of the event. They can be contacted at 559-782-7400.

Lieutenant Mark Azevedo
Porterville Police Department

Exhibit B



PORTERVILLE FIRE DEPARTMENT

FIRE PREVENTION DIVISION

OUTDOOR FOOD BOOTH REQUIREMENTS

Authority cited: 2019 California Fire Code (CFC)

These standards apply to individual tents, temporary structures, or membrane structures less than 200 square feet in area, and canopies less than 400 square feet in area used as outdoor carnival and fair booths.

A permit is required before any tent or membrane structure larger than 400 square feet can be erected. (California Fire Code 3103.2)

Tents and membrane structures having an area in excess of 400 square feet shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the building official and fire code official.

Exceptions:

1. Tents used exclusively for recreational camping purposes.
2. Tents open on all sides which comply with all the following:
 - a. Individual tents having a maximum size of 700 square feet.
 - b. Aggregate area of multiple tents placed side by side without 12 feet clearance, not exceeding 700 square feet total.
 - c. A minimum clearance of 12 feet to all structures and other tents.

Definitions

Cooking Booth – Booth where food is prepared by a heating or cooking process such as, but not limited to, grilling, frying, barbecuing, flambe', deep fat frying, baking, warming, or boiling. **Deep fat frying** – Any cooking operation or process whereby the product floats or is submerged in hot oil during the cooking process.

Vendor Booth – Any booth other than a cooking booth.

Cooking Booth Construction and Location

- All fabrics or membranes covering cooking booths shall be California State Fire Marshal certified flame retardant and be labeled as such.
- Decorative materials shall be inherently fire resistive or shall be treated with a fire-retardant spray.
- Flooring materials used within cooking booths and cooking equipment shall be non-combustible or California State Fire Marshal certified fire-retardant. (*Exception 3/8" plywood or similar material.*)
- Each cooking booth shall have at least one exit-way, a minimum **3'** wide and **6'8"** high. Booth frames shall not obstruct exit paths.
- Cooking booths shall have a minimum clearance of **10'** on at least two sides with clearance of at least **10'** from any vendor booth.
- Minimum **12'** separation required between cooking booths with an aggregate size of 400 sq.ft. with sides, or 700 sq.ft. without sides.

Cooking Equipment

- All interior cooking equipment shall be of an approved type, and open-flame cooking shall be located a minimum of **18"** from booth back/side drop materials.
- Compressed gas (butane, propane, or natural) equipment shall conform to the following:
 - Shut off valves shall be provided at each fuel source;
 - Cooking appliances shall have an ON-OFF valve located far enough away from the appliance to be safely shut off in case of fire;
 - Manufactured cooking appliances shall be equipped with a Thermocouple Valve to shut off fuel if flame is extinguished;
 - The booth operator shall test all connections for leaks with soap and water solution;
 - Fuel tanks shall be protected from damage and secured in an upright position;
 - Hoses shall be of a type approved for use with the equipment and fuel type;
 - Tanks not in use shall be turned off;
 - Extra fuel tanks shall not be stored in booths;
 - Unused fuel cylinders shall be stored in a secured position.



PORTERVILLE FIRE DEPARTMENT

FIRE PREVENTION DIVISION

Wood, Charcoal (Solid Fuels) Cooking

- Use only an electric starter or commercially sold lighter fluid.
- Charcoal cooking and storage of lighter fluid is prohibited inside booths.
- Charcoal cooking shall be located a minimum of ten **10'** away from booths and in areas away from public access.
- Charcoal cooking shall be located at least ten **10'** away from combustible structures and parked vehicles.
- Coals shall be disposed of in metal containers with lids approved by the Fire Marshal.

Deep Fat Frying, Flambé, and Wok

- Deep fat frying, flambé, and wok shall be located **no closer than 18"** from any combustible material.
- Cooking areas shall not be accessible to the public.
- Deep fat frying equipment shall be equipped with a temperature regulating device or other method of regulating temperatures approved by the Fire Marshal.
- Separation shall be maintained with a minimum of **3'** clearance between deep fat frying and flambé or open flame cooking.

Vendor Booth Construction and Location

- Each vendor booth shall have at least one exit-way, a minimum of **3'** wide by **6'8"** high. Booth frames shall not obstruct exit paths.
- Vendor booths shall have a minimum clearance of **20'** on at least one side, with clearance of at least **10'** from any cooking booth.

Electrical Power

- Generators shall be placed only in locations approved for festival use.
- Generators shall not be refueled during event hours. Extra fuel shall not be stored during event hours.
- Smoking and open flames shall be prohibited within **25'** of refueling operations.
- Extension cords shall be of a grounded type and approved for exterior use.

Fire Extinguishers

- Each cooking booth shall be equipped with a fire extinguisher with a minimum rating of **2A: 10BC**. Booths with deep fat frying or flambé cooking shall be equipped with an extinguisher rated for **class "K" fires**.
- Cooking booths shall be equipped with visible and accessible fire extinguishers mounted adjacent to the exit.
- For vendor booths, the maximum travel distance to a fire extinguisher with a minimum rating of **2A: 10BC** shall not exceed **75'**
- Each generator shall be provided with a fire extinguisher with a minimum **40BC** rating. The extinguisher shall be located near the generator and accessible at all times.
- All fire extinguishers shall be serviced and tagged annually by a State-licensed contractor.

Miscellaneous

- The Porterville Fire Department shall be provided with a site plan showing emergency access.
- All booths are subject to inspection by the Fire Department and any discrepancies will require immediate action.
- All cooking areas shall be cleaned regularly to prevent the build-up of grease.
- There shall be a competent adult in cooking booths at all times to ensure safety.
- Seating shall be a minimum of **15'** from booths with open flame devices or cooking appliances.
- The Fire Department shall be provided with a telephone number of the responsible party to contact in case of emergency on a 24 hour basis.

Fire Safety Tips

- Know where fire extinguishers are and how to use them.
- Do not leave cooking unattended.
- Do not wear loose-fitting clothing while cooking.
- Remove trash accumulation regularly.
- Keep combustible materials away from heat sources.
- **In case of an emergency dial 9-1-1.**

The attached "Food Booth Vendor Agreement" must be on site at all times and presented upon request of any Porterville Fire Department Personnel.



Cooking Booth Vendor Agreement

Booth/Space # _____ Business Name _____
On Site Contact Name _____ Contact Phone # _____

Cooking Booth Construction and Location

1. Tents, canopies, and decorative material shall be inherently flame-resistive and proof of certification shall be on site at all times.
2. Cooking booth floors may be concrete, asphalt, or plywood over grass and dirt.
3. An emergency access of 36" shall be maintained between the back of each cooking booth and any fencing at all times. **NO EXCEPTIONS.**

Cooking Equipment

1. Cooking with charcoal, wood, or other solid fuel shall be located a **minimum of 10'** away from booths, canopies, combustible material or any public access.
2. Deep fat frying shall be located a **minimum of 3'** away from booths, canopies, open flame cooking, combustible material or any public access.
3. Any open flame cooking shall be located a **minimum of 18"** away from any vertical surface, combustible material or any public access.
4. Extra fuel tanks shall **NOT** be stored in booths or within 5' of cooking equipment.
5. All cooking, gas powered, or electrically energized equipment shall meet manufacturer specifications and shall be free of excess cooking oils or any other combustible materials.

Miscellaneous

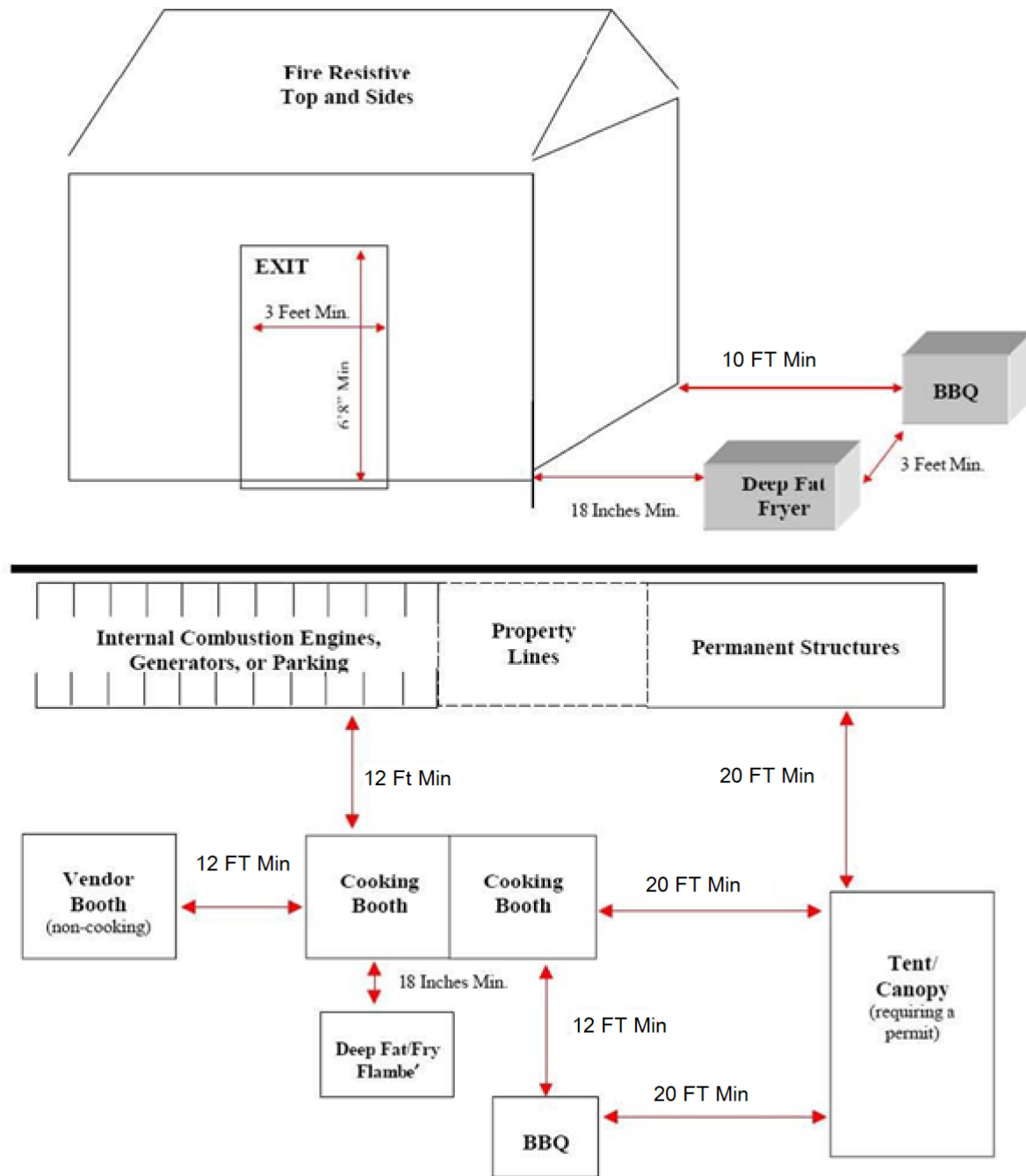
1. A visible and accessible, 2A:10BC fire extinguisher with a current (within the last 12 months) State Fire Marshall tag must be provided within 20' of travel in all cooking areas.
2. A visible and accessible Class K portable fire extinguisher with a current (within the last 12 months) State Fire Marshall tag must be provided in all cooking areas with deep fat frying.
3. All cooking areas shall be cleaned regularly to prevent build-up of combustible substances.
4. Extension cords shall be of a grounded type, approved for exterior use, and in good working order.
5. Smoking is not allowed at any time within food booths or within 25' of any fuel source.
6. Specialized cooking equipment is subject to approval by the Fire Marshal.

Additional Requirements:

The Porterville Fire Department has established these requirements in accordance with the California Fire Code. Your cooperation is required to maintain a high level of fire safety throughout the event. All booths are subject to fire department inspection prior to and at any time during the event. Any discrepancies to the above requirements or any conditions considered a threat to fire and life safety by the Fire Inspector may result in the immediate cessation of cooking.

By signing below, I acknowledge that I have read and agree to comply with all requirements of this contract.

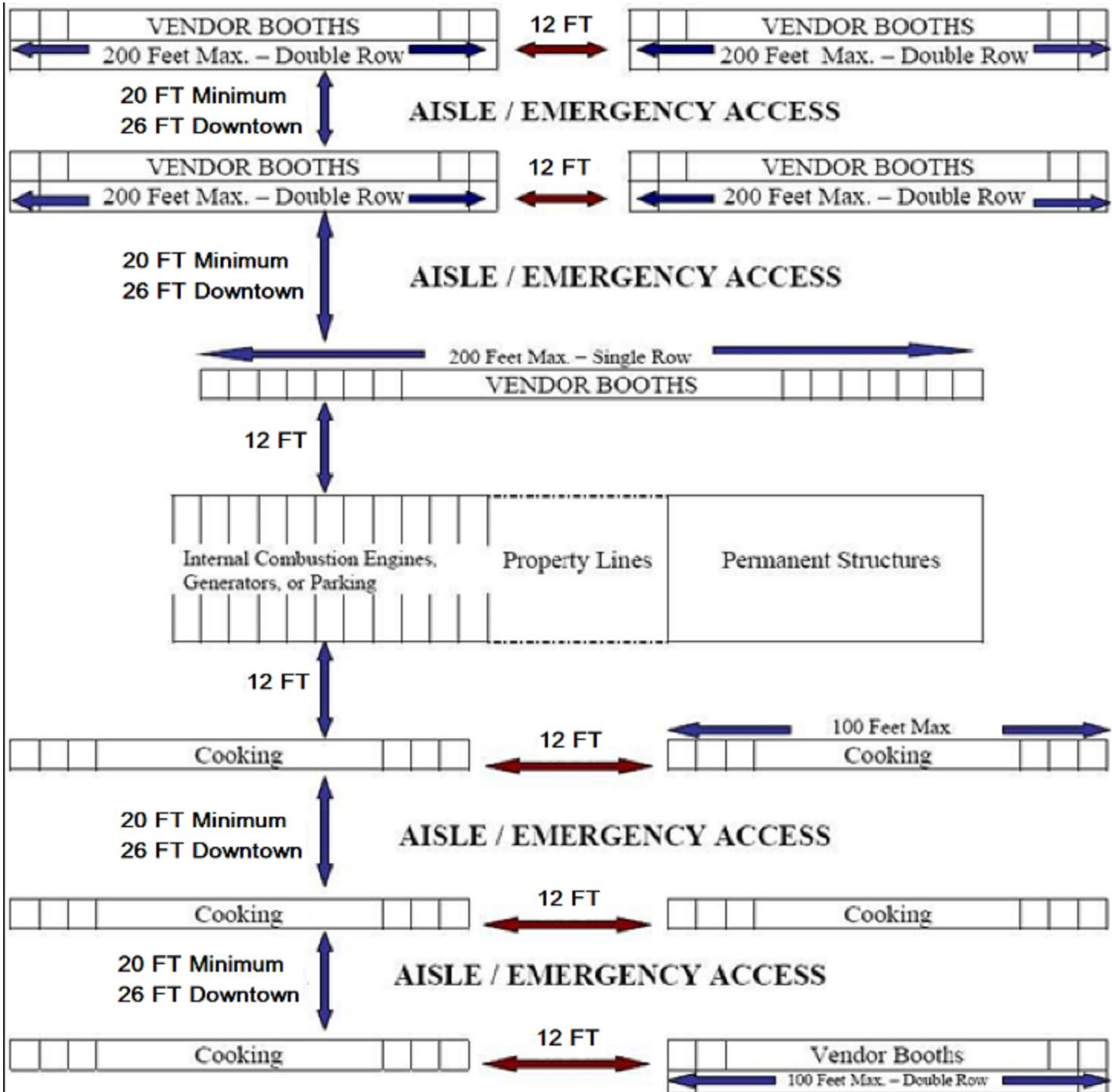
Signature _____ Date _____





PORTERVILLE FIRE DEPARTMENT

FIRE PREVENTION DIVISION



**Note: Cooking booths are limited to single rows only. Back-to-back rows are not permitted. Maximum overall length of individual rows is 100 feet with aggregate spacing throughout.*

***Note: Aggregate area of multiple tents placed side by side without 12 feet clearance shall not exceed 400 square feet with sides, or 700 square feet without sides. A minimum clearance of 12 feet to all structures and other tents is required.*

****Note: Maximum overall row length distances listed, or shown above, shall meet spacing requirements for aggregate size restrictions*

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



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

- 1 Name and home address of the applicant: Porterville Chamber of Commerce, 93 N. Main St., Ste. A, Porterville, CA 93257
- 2 Address where amplification equipment is to be used: Main St.
- 3 Names and addresses of all persons who will use or operate the amplification equipment: Equipment will be on individual entries in the parade - names on file at the Chamber
- 4 Type of event for which amplification equipment will be used: Children's Christmas Parade
- 5 Dates and hours of operation of amplification equipment: December 5, 2024 7:00pm - 9:00pm
Also Approved for the Alternate Rain Date of December 12, 2024
- 6 A general description of the sound amplifying equipment to be used: Various types

Section 18-9

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

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

Section 18-14

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

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

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

Signature of Applicant

10/17/2024
Date

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

Mark Azevedo, Lieutenant
City of Porterville, Chief of Police/Designee

11/4/24
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/04/2024

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

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

PRODUCER Hylant Group Inc 811 Madison Ave Toledo OH 43604	CONTACT NAME: Crystal Gleason PHONE (A/C, No, Ext): 419-259-2710 FAX (A/C, No): 419-255-7557 E-MAIL ADDRESS:														
Insured All Active US Rotary Clubs & Districts Porterville Rotary Club Attn: Risk Management Dept. 1560 Sherman Avenue Evanston, IL 60201-3698	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : Westchester Surplus Lines Insurance Company</td><td>10172</td></tr><tr><td>INSURER B :</td><td></td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Westchester Surplus Lines Insurance Company	10172	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : Westchester Surplus Lines Insurance Company	10172														
INSURER B :															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Liquor Liability Included GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	Y	G73578917003	7/1/2024	7/1/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	Y	G73578917003	7/1/2024	7/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB DED ☐ RETENTION \$		Not applicable			EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	Not applicable			PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

The Certificate Holder is included as an additional insured where required by written contract or permit subject to the terms and conditions of the general liability policy, but only to the extent bodily injury or property damage is cause in whole or in part by the acts or omissions of the insured.

CERTIFICATE HOLDER**CANCELLATION**

The City of Porterville
291 N. Main St.
Porterville, CA 93257

The Rotary Club of Porterville / District 5230
RE: Children's Christmas Parade / 12/05/2024

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

The City of Porterville
291 N. Main St.
Porterville, CA 93257
RE: Rotary Club of Porterville
Event Name: Children's Christmas Parade
Event Location: Main Street Porterville
Event Date: 12.05.2024

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Council Member Requested Agenda Item - Consideration of "Merry Christmas" Banner for Main Street

SOURCE: City Manager's Office

COMMENT: Council Member Raymond Beltran has requested that an item be brought forward for the City Council to consider authorizing the purchase and installation of a "Merry Christmas" banner on Main Street in Downtown. Pursuant to Council policy, if approved, the item would be placed as a scheduled matter on the Agenda of December 3, 2024.

RECOMMENDATION: That the City Council approve Council Member Beltran's request to consider the purchase and installation of a "Merry Christmas" banner for Main Street as a scheduled matter at its meeting of December 3, 2024.

ATTACHMENTS:

Appropriated/Funded:

Review By:

Department Director:
Patrice Hildreth, City Manager

Final Approver: Patrice Hildreth, City Manager



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Status and Review of Declaration of Local Flood Emergency

SOURCE: City Manager's Office

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, which at its meeting on November 5, 2024, the Council reviewed and acted to renew the emergency declaration. Staff continues to work with FEMA for resolution of the City's claims and will continue to work to identify a timeline and critical path forward.

Chronology:

On March 10, 2023, due to the volume of water added to Success Lake from significant storm activity, Tulare County Sheriff Mike Boudreaux 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. The Public Works Department continues to work diligently in shoring the banks of the Tule River.

To accommodate upcoming ceremonies and events in the gymnasium at Porterville College, the TEP and Emergency Shelter at the College closed at noon on April 11, 2023, and thirty (30) individuals were successfully transitioned to the new TEP at the Porterville Army National Guard Armory. A Special Meeting of the Council was scheduled for April 14, 2023, to consider a draft License agreement for the City's temporary use of the State facility. The American Red Cross continued to provide shelter services at the TEP, but transitioned out on May 5, 2023. With the authority granted to the City Attorney and City Manager at its meeting on April 18, 2023, the City and County drafted a Memorandum of Understanding (MOU) in an effort to continue TEP shelter services until May 5, 2023, while the Mandatory Evacuation Order remained in place along the banks of the Tule River in city limits.

On April 14, 2023, the County transmitted a letter to the California Governor's Office of Emergency Services (Cal OES), requesting continued financial support for the Armory TEP, which the County reported that Cal OES did not approve. At its meeting on July 11, 2023, the County Board of Supervisors approved the MOU for TEP shelter services between the City and the County, retroactive from April 11,

2023 to May 5, 2023.

Given the lack of continued financial support by Cal OES, the County notified the City that it would discontinue its support of the Armory TEP at noon on May 5, 2023, and American Red Cross would vacate the facility as well, leaving the City alone to determine the function of the Armory TEP after noon on May 5th. The significant threat of local emergency continued 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." Given the forecasts of potential widespread flooding damage to west Tulare County and significant portions of Kings County later this Spring and early Summer, Red Cross representatives strongly believe they will be returning to the Armory TEP and other Tulare County locations (e.g. Porterville Developmental Center) to assist those displaced from homes due to flooding. Until such time that Cal OES makes the determination that emergency conditions again exist in Tulare County, the Council was left to determine if local emergency conditions existed to continue operating the Armory TEP, which expenditures would not be reimbursable given the lack of approval by Cal OES.

Given the continued mandatory evacuation order along the Tule River in city limits and the legal implications of the Martin v. Boise federal 9th Circuit Court of Appeals decision (2018), and the announced departure of the American Red Cross and County support at noon on May 5, 2023, City staff developed an operational plan for the Armory TEP, cognizant of the lack of federal and State reimbursement of costs. As of April 27, 2023, eighteen (18) individuals were receiving shelter services at the Armory TEP, with most individuals only at the facility in the evening.

Given the limited daytime TEP population, and daily meal services provided at the nearby Porterville Welcome Center, staff recommended to limit the Armory TEP hours from 7:00 P.M. to 7:00 A.M. daily, providing temporary staffing of two individuals (including a security guard). Temporary staffing had been quoted at \$25 per hour, for a daily expense of \$600 (or \$18,000 per month). At its meeting on May 2, 2023, the Council authorized the continued operation of the Armory TEP for a 12-hour operational period over the evenings, and also directed that the Armory restrooms and shower facilities be used by the individuals at the TEP, which although not ADA-compliant, are not required for non-reimbursable shelter activities while under a Declaration of Local Emergency. The contract for the on-site mobile shower and portable restroom facilities that are ADA-compliant expired on May 11, 2023, which the rental cost was approximately \$18,000 per month.

However, the City Attorney recommended maintaining a single ADA-portable restroom at the facility. Beginning at noon on May 5, 2023, the City assumed administrative and financial responsibility for the Armory, which has established operational hours of 8:00 P.M. to 8:00 A.M. and averaged twenty (20) individuals each evening (please see attached

daily census).

On May 4, 2023, the City received an updated draft License agreement for the use of the Armory, proposing a 1-year lease for exclusive use by the City effective May 5, 2023, through May 4, 2024. The draft agreement proposes no fee for the use of the facility, but that the City assume responsibility for the facility's utilities. On Monday, May 8th, the last remaining Army personnel left the facility, with the City now having complete exclusive use of the facility. At its meeting on May 16, 2023, the Council approved the updated draft License agreement for the 1-year exclusive use of the Armory.

On March 31, 2023, Governor Newsom issued Executive Order N-6-23 to support Tulare Lake Basin flood response, which streamlines State preparation, response and recovery actions and supports local flood response efforts and assist in preparing communities for the impacts of snowmelt runoff in the months ahead.

On April 3, 2023, President Biden granted a Major Disaster Declaration for the State of California, triggering the release of Federal funds to help individuals and communities recover from Severe Winter Storms, Straight-line Winds, Flooding, Landslides and Mudslides that occurred February 21, 2023, and continuing. Monterey and Tulare counties were designated in the Major Disaster Declaration for both Individual and Public Assistance, as well as Hazard Mitigation. On July 14, 2023, the Federal Emergency Management Agency (FEMA) made the determination to close the incident period effective July 10, 2023. Although the incident period has been closed, businesses and individuals may still apply for federal disaster assistance through September 1, 2023.

On May 17, 2023, Governor Newsom issued Executive Order N-7-23 to support Tulare Lake Basin flood response, which extends flood diversion and groundwater recharge flexibilities implemented for the Tulare Lake Basin, including Kern River floodwater to be allowed into the California Aqueduct.

On August 4, 2023, Governor Newsom issued Executive Order N-10-23 to streamline levee repairs and debris removal to help local communities recover from flooding and prepare for the next wet season.

At its meeting on April 4, 2023, the Council approved Resolution No. 15-2023, which authorized the appropriation of funds from the Catastrophic/Emergency Reserve Fund for the costs associated with the response to the local emergency including personnel, equipment, services and other necessary expenditures. At its meeting on April 18, 2023, the Council approved two emergency expenditures that exceeded \$5,000 in their acquisition, which included additional Water Rescue Equipment for the Fire Department (\$6,417.70) and the 30-day rental of two mobile shower/restroom units (\$13,151) for the Armory TEP due to the facility's restrooms and showers not being compliant with the

Americans with Disabilities Act (ADA). At its meeting on May 2, 2023, the Council approved two additional emergency expenditures that exceeded \$5,000 in their acquisition, which included a trailer-mounted 6" dewatering and sewage pump (\$77,396.67), and local trucking services of riprap material (\$5,436.00), both for the Public Works Department.

In support of two private personnel providing nightly security at the Armory as it continues to function as a temporary evacuation point and shelter, City staff has secured TopKnotch Security, Inc. as the security services provider. TopKnotch provided an agreement for security services for approximately \$18,000 per month (2 personnel at \$25/hour for 12 hours per day for 30 days per month), which the Council approved at its meeting on June 6, 2023. Due to violations by TopKnotch Security of its agreement with the City for security services, City staff terminated the agreement effective immediately on Friday, July 14, 2023, causing the Police Department to provide security services at the Armory on Friday, July 14 through Sunday, July 16, 2023. Beginning on Monday, July 17, 2023, Good Guard Security, Inc. began providing security services, which at its meeting on July 18, 2023, the Council approved an agreement for security services for approximately \$21,000 per month (2 personnel at \$28.95/hour for 12 hours per day for 30 days per month).

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. Governor Newsom Executive Order N-6-23
6. Governor Newsom Executive Order N-7-23
7. Governor Newsom Executive Order N-10-23
8. Federal Disaster Declaration Fact Sheet - April 3, 2023
9. License to Use State Military Property - April 14, 2023
10. City and County Memorandum of Understanding for Shelter Support
11. County of Tulare CalOES Shelter Support Request Letter - April 14, 2023
12. License to Use State Military Property - May 16, 2023
13. Federal Disaster Declaration Notice - July 14, 2023
14. Resolution No. 15-2023
15. Rescue Source & Rescue 3 Invoice: Water Rescue

- Equipment
16. Royal Restrooms Invoice: Mobile Shower-Restroom Units
 17. Rain for Rent Pump Invoice
 18. Mike Clark Trucking Invoice
 19. TopKnotch Security, Inc. Agreement
 20. Good Guard Security, Inc. Agreement
 21. Municipal Code Chapter 9 - Civil Defense and Disaster
 22. California Government Code 8558
 23. Porterville Army National Guard Armory Daily Census

Appropriated/Funded:

Review By:

Department Director:
Patrice Hildreth, City Manager

Final Approver: Patrice Hildreth, 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 13th 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 13th 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 17th 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 13th 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 17th 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:

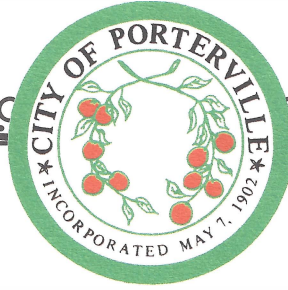
Fernando Gabriel-Moraga, Deputy City Clerk

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://www.tularecounty.ca.gov/emergencies).

A Temporary Evacuation point has been set up at Porterville College, 100 E College Avenue. Thank you.

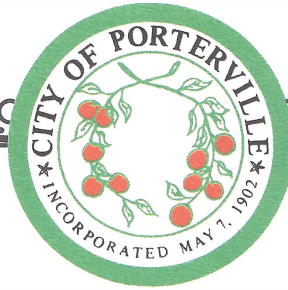
Jake Castellow
Chief of Police

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.

A Temporary Evacuation point has been set up at Porterville College, 100 E College Avenue.

Jake Castellow

Chief of Police

Porterville Police Department Mission Statement

The members of the Porterville Police Department are committed to the safety and security of the community while providing quality service with excellence, honesty and integrity.

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER N-6-23

WHEREAS on March 1, 2023, March 8, 2023, March 12, 2023, March 14, 2023, and March 28, 2023, I proclaimed a State of Emergency to exist in 47 counties, cumulatively, as a result of a series of ongoing winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

WHEREAS the State has experienced over a dozen atmospheric rivers since December 2022, resulting in compounding and cumulative impacts across California, including what are expected to be record amounts of snow in the Sierra Nevada, in particular in the southern Sierra, and current and forecasted precipitation are expected to add to historic snowpack levels already composed of several million acre-feet of snow water content; and

WHEREAS reservoirs into which the Sierra snowpack runoff would flow are already impacted by runoff, which is expected to greatly exceed available storage capacity in the reservoirs in and around the Tulare Lake Basin and the San Joaquin River Basin, and much of the ground in the area has reached saturation due to the series of ongoing winter storms; and

WHEREAS the Tulare Lake Basin is the terminal point for the Kings, Kaweah, Tule, and Kern Rivers, and several smaller streams, meaning that water from additional expected rains and Sierra snowpack runoff that cannot be stored in reservoirs or absorbed into the ground will flow into the basin; and

WHEREAS recent storms have already caused flooding in the Tulare Lake Basin, leading to emergency rescues and evacuation orders in Allensworth, Alpaugh, and other communities in Tulare and Kings Counties, and leading to dozens of levee breaks and local agencies directing strategic cuts to canals and levees to prevent further flooding of communities; and

WHEREAS runoff from the snowpack caused by the winter storms could result in flood conditions in the Tulare Lake Basin resembling those last experienced in the historic floods of 1969 and 1983, following historic snowpacks in those years; and

WHEREAS local flood control districts and other local governments generally have flood control responsibility in the Tulare Lake Basin, but state agencies such as the California Department of Forestry and Fire Protection (CAL FIRE), the California Department of Water Resources, and the Governor's Office of Emergency Services are actively engaged in supporting this local effort, and state agencies will continue to provide technical advice and other resources and support as needed, with a particular priority on protecting the lives and health of local communities; and

WHEREAS stretches of the San Joaquin River have been or are at flood stage this spring, river stages are expected to stay high throughout the spring as snowpack melts, and multiple levee repairs are underway on the lower San Joaquin River; and

WHEREAS the Tulare Lake Basin is hydrologically connected to the San Joaquin River Basin and that connection has the potential to exacerbate the flood risk in the San Joaquin River Basin, and so further emergency response efforts may become necessary in the San Joaquin River Basin as well; and

WHEREAS heavy accumulation of snowfall on the roof of Bear Valley Elementary School, located in Alpine County, currently renders instructional space unsafe for use; and

WHEREAS frequent flooding and flood evacuation orders have resulted in school closures and low student attendance in Pajaro Middle School, Hall District Elementary School and Ohlone Elementary, located in Pajaro Valley Unified School District in Santa Cruz County; and

WHEREAS it is critical that displaced students are back in school facilities as quickly as possible to ensure continuity in education; and

WHEREAS the State of California and local governments, in collaboration with the Federal government, continue sustained efforts to respond to and mitigate the effects of these storms; and

WHEREAS on March 9, 2023, I requested a Presidential Emergency Declaration related to these late winter storms, which was expeditiously approved by President Joseph R. Biden, Jr.; and

WHEREAS on March 15, 2023, I requested the addition of 9 counties to the existing Presidential Emergency Declaration related to these late winter storms, which was expeditiously approved by the President; and

WHEREAS on March 28, 2023, I also requested the President issue a Major Disaster Declaration related to these late winter storms for counties that met the validated damage threshold; and

WHEREAS under the provisions of 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 these ongoing winter storms.

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, 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. All provisions contained in the above-referenced Proclamations of a State of Emergency shall remain in full force and effect.
2. To protect health, safety, and the environment, and to reduce the risks of local catastrophic flooding in the Tulare Lake Basin, Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code, and regulations adopted pursuant to that Chapter, are

suspended for activities that meet all of the requirements in Paragraph 3.

3. The suspension created by Paragraph 2 shall apply to floodwater diversion, debris removal, and levee repair and breach in the Tulare Lake Basin, on the condition that the actions cease when the flood conditions have abated to the point there is no longer flooding outside of defined streambeds and levees. Additionally, the suspension created by Paragraph 2 shall apply to floodwater diversion only if all of the following additional conditions are met:
 - a. The diversion of floodwater from the Tulare Lake Basin or rivers or streams flooding the Tulare Lake Basin must occur between March 31, 2023, and August 1, 2023, for flood management purposes.
 - b. For diversions directly from rivers or streams, a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice that flows downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
 - c. For diversion of floodwaters in the Tulare Lake Basin (that is, waters no longer contained within a defined streambed or levee), a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice that areas from which the floodwaters are diverted are either at imminent risk of flooding or already flooded, with potential or existing inundation of land, roads, or structures.
 - d. Any water diverted is not diverted to and will not be applied to any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purposes of groundwater recharge or managed wetlands.
4. In addition to the mandatory conditions set forth in Paragraph 3, any person conducting planned levee breaches or controlled inundation to prevent further catastrophic flooding pursuant to the suspension created by Paragraph 2 should take care, wherever feasible, to protect above-ground infrastructure and drinking water and wastewater infrastructure such as drinking water well field sites, wastewater discharge ponds, and other water resources that are necessary for the protection of human health and the recovery of impacted communities.
5. For purposes of conducting emergency flood preparation and response activities, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Secretary of the Natural Resources Agency concurs that local action is required, and (c) permits necessary to carry out actions under (a) and (b), Public

Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division, are suspended to the extent necessary to address flood impacts in the Tulare Lake Basin.

6. To support adequate state staffing for all state agencies and departments with an assigned response and/or recovery role related to flooding in the Tulare Lake Basin, consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the flooding in the Tulare Lake Basin. Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.
7. The limitation for the period of employment for State Personnel Board emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to flooding in the Tulare Lake Basin. The requirements and period of employment for such appointments will be determined by the Office of Emergency Services but shall not extend beyond the termination date of the State of Emergency.
8. To the extent the Alpine County Office of Education and Alpine County Unified School District are required to use temporary facilities such as the Alpine County Public Library due to extraordinary snowpack on the roof of Bear Valley Elementary School, rendering instructional space unsafe, the requirements of Education Code sections 17280, et seq., 17365, et seq., and Government Code sections 4453 and 14963 are suspended with respect to those temporary facilities. The requirements of the California Building Code (codified in Title 24 of the California Code of Regulations), as adopted and enforced by the local building and fire agencies with jurisdiction over the area, shall apply to these temporary facilities.
9. To the extent the Alpine County Office of Education and Alpine County Unified School District are required to temporarily use buildings, as defined in the California Building Code (California Code of Regulations, Title 24, Part 2, Chapter 2, section 202), such as the Alpine County Public Library due to extraordinary snowpack on the roof of the Bear Valley Elementary School, rendering instructional space unsafe, local planning and zoning regulations shall be suspended to allow immediate occupancy of such buildings for use as public school facilities. In addition, the requirements of the California Building Code, as adopted and enforced by the local building and fire agencies with jurisdiction over the area, shall apply, except that the requirements

relating to Change of Use or Occupancy Classification in the California Building Code (California Code of Regulations, Title 24, Part 2, Chapter 1, section 111) shall not trigger immediate code upgrades, and a Certificate of Occupancy shall not be withheld for such immediate and temporary use of the facilities as a public school, as long as such facilities met building code requirements at the time of their construction, are accessible to individuals with disabilities, and are judged safe for use by the local building official.

10. Education Code section 60641 (a) requiring that all pupils be administered academic assessments in mathematics, English language arts, and science, as provided for in Education Code section 60640, is suspended for the 2022-2023 school year for Pajaro Middle School, Hall District Elementary School and Ohlone Elementary School of the Pajaro Valley Unified School District, if a federal waiver is approved by the United States Department of Education.

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

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 31st day
of March 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

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

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER N-7-23

WHEREAS on March 1, March 8, March 12, March 14, March 28, April 20, and May 15, 2023, I proclaimed a State of Emergency to exist in 52 counties, cumulatively, as a result of a series of winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

WHEREAS on March 31, 2023, I issued Executive Order N-6-23 to further bolster the emergency response to this Late Winter Storms event, particularly in the Tulare Lake Basin that continues to be plagued by historic flooding; and

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

WHEREAS on March 10, 2023, I issued Executive Order N-4-23 to address evolving drought conditions due to the winter storms and to mitigate flooding by facilitating groundwater recharge; and

WHEREAS due to the complexity of the impacts from over a dozen Atmospheric River events since December 2022, including the accumulation of a record snowpack in the Sierra Nevada that is likely to yield record snowmelt runoff, especially in the Tulare Lake Basin, I previously issued Executive Orders identified herein to respond to and recover from the winter storms, and those orders now require updating in-light of the most recent runoff conditions and the State's more robust and recent modeling of likely flood impacts; and

WHEREAS the Tulare Lake Basin includes portions of Fresno, Kings, Tulare, and Kern counties and is the terminal point for the Kaweah, Tule, and Kern Rivers as well as a portion of the Kings River and several smaller streams, meaning that water from Sierra snowpack runoff that cannot be stored in reservoirs or absorbed into the ground will flow into the basin; and

WHEREAS the Tulare Lake Basin is hydrologically connected to the San Joaquin River Basin via the James Bypass and Fresno Slough and that connection has the potential to exacerbate the flood risk in the San Joaquin River Basin, and so further emergency response efforts may become necessary in the San Joaquin River Basin; and

WHEREAS stretches of the San Joaquin River, Chowchilla and Eastside Bypasses, San Joaquin River mainstem and tributaries (Fresno River, Chowchilla River, Merced River, Stanislaus River, and Tuolumne River, hereafter, San Joaquin River Tributaries), and Fresno Slough/James Bypass have been or are at flood stage this spring, river stages are expected to stay high or increase throughout the spring and summer as snowpack melts, and multiple levee repairs are underway on the lower San Joaquin River; and

WHEREAS the Kern River – California Aqueduct Intertie exists to move floodwaters safely from the Kern River into the California Aqueduct, and the Kern River Watermaster on May 10, 2023, requested the use of the Intertie to prevent Kern River floodwater from exacerbating flooding in the Tulare Lake Basin, and state agencies have begun actions to safely enable the diversion of these flood flows; and

WHEREAS under the provisions of 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 these ongoing winter storms.

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, 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. All provisions contained in the above-referenced Proclamations of a State of Emergency and Executive Orders shall remain in full force and effect except as modified in this Order.
2. Paragraph 2 of Executive Order N-6-23 is withdrawn and replaced by the following:

To protect health, safety, and the environment, and to reduce the risks of local catastrophic flooding in the Tulare Lake or San Joaquin River Basins, the following are suspended for activities that meet the requirements in Paragraph 3.

- a. Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code, and regulations adopted pursuant to that Chapter; and
 - b. Division 13 (commencing with Section 21000) of the Public Resources Code, and regulations adopted pursuant to that division.
3. Paragraph 3 of Executive Order N-6-23 is withdrawn and replaced by the following, except that any diversion in the Tulare Lake Basin that is operational as of June 1, 2023, may continue to operate under Paragraph 3 of Executive Order N-6-23 until August 31, 2023:

The suspensions created by Paragraph 2 shall apply to floodwater diversion, floating vegetation and debris removal, and levee repair and breach, in the Tulare Lake or San Joaquin River Basins, on the condition that the actions cease when the flood conditions have abated to the point there is no longer a risk of, or existing, flooding causing inundation of land, roads, or structures at or downstream of the point of diversion.

4. Additionally, the suspensions created by Paragraph 2 shall apply to floodwater diversion only if all the following additional conditions are met:
 - a. Any diversion of floodwaters directly from the (i) Tulare Lake Basin or rivers or streams or bypasses flooding the Tulare Lake Basin or (ii) the San Joaquin River or San Joaquin River tributaries (including Fresno Slough and James Bypass) or San Joaquin River bypasses must occur between March 31, 2023, and August 31, 2023, for flood management purposes.

- b. With respect to diversions of floodwaters directly from rivers or streams or bypasses, a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that flows downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
- c. With respect to diversions of floodwaters that are no longer contained within a defined streambed or levee, a local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice that areas from which the floodwaters are diverted are either at imminent risk of flooding or already flooded, with potential or existing inundation of land, roads, or structures, or are on lands inundated as a result of actions within subparagraph (a).
- d. Any floodwater diverted is not diverted to and will not be applied to:
 - i. Any barn, ponds, or lands to which manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied;
 - ii. Any agricultural field where pesticide or fertilizer application has occurred in the prior 30 days or in the period prohibited by applicable law, whichever is longer;
 - iii. Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns; or
 - iv. Any area that has not been in active irrigated agricultural cultivation within the past three years including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purposes of groundwater recharge or managed wetlands.
- e. With respect to diversions of floodwaters from waters tributary to the Sacramento and San Joaquin River Delta as defined in Water Code section 12220 (Delta), water rights holders are not making releases of stored water or reoperating facilities to provide flow for the purposes of meeting water quality control plan or endangered species requirements in the Delta at the time of the diversion.
- f. With respect to diversions of floodwaters directly from the San Joaquin River or San Joaquin River Tributaries, the diversion uses:
 - i. either existing diversion infrastructure or temporary pumps;

- ii. no new permanent infrastructure or permanent construction; and
 - iii. simple screens installed on temporary pump intakes to minimize the impacts of diversion to salmon and other aquatic life.
- 5. Paragraph 4 of Executive Order N-6-23 is withdrawn and replaced by the following:

In addition to the mandatory conditions set forth in Paragraph 3, any person conducting planned levee breaches or controlled inundation to prevent further catastrophic flooding pursuant to the suspensions created by Paragraph 2 should, wherever feasible, protect above-ground infrastructure and water sources that are necessary for the protection of human health and the recovery of impacted communities.

- 6. Paragraph 5 of Executive Order N-6-23 is withdrawn and replaced by the following:

For purposes of conducting emergency flood preparation and response activities beyond those provided for in Paragraphs 2 and 3, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Secretary of the Natural Resources Agency concurs that local action is required, and (c) permits necessary to carry out actions under (a) and (b), Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division, are suspended to the extent necessary to address flood impacts in the Tulare Lake or San Joaquin River Basins.

- 7. Paragraph 6 of Executive Order N-6-23 is withdrawn and replaced by the following:

To support adequate state staffing for all state agencies and departments with an assigned response and/or recovery role related to flooding in the Tulare Lake or San Joaquin River Basins, consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the flooding in the Tulare Lake Basin. Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.

- 8. Paragraph 6 of Executive Order N-6-23 is withdrawn and replaced by the following:

The limitation for the period of employment for State Personnel Board

emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to flooding in the Tulare Lake or San Joaquin River Basins. The requirements and period of employment for such appointments will be determined by the Office of Emergency Services, but shall not extend beyond the termination date of the State of Emergency.

9. Paragraph 3 of Executive Order N-4-23 is withdrawn and replaced by the following, except that any diversion that is operational as of June 1, 2023, may continue to operate under Paragraph 3 of Executive Order N-4-23 until August 31, 2023:

The suspensions created by Paragraph 2 of Executive Order N-4-23 shall apply to diversions of floodwaters as to which all the following conditions are met:

- a. Diversions of floodwaters directly from rivers, streams, or bypasses must occur between March 10, 2023, and August 31, 2023, for flood management and associated groundwater recharge.
- b. Diversions of floodwaters no longer contained within a defined streambed must prevent imminent risk of flooding or relieve flooding pressure from land, roads, or structures, already inundated, including as a result of actions within subparagraph (a).
- c. A local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that waters at or downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
- d. The diversions cease when the flood conditions have abated to the point there is no longer a risk of, or existing, flooding causing inundation of land, roads, or structures at or downstream of the point of diversion.
- e. Any floodwater diverted is not diverted to and will not be applied to:
 - i. Any barn, ponds, or lands, to which manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied;
 - ii. Any agricultural field where pesticides or fertilizer application has occurred in the prior 30 days or in the period prohibited by applicable law, whichever is longer;
 - iii. Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns; or

- iv. Any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purpose of groundwater recharge or managed wetlands.
- f. With respect to diversions of floodwaters from waters tributary to the Sacramento and San Joaquin River Delta (Delta) as defined in Water Code section 12220 (Delta), water rights holders are not making releases of stored water or reoperating facilities to provide flow for the purposes of meeting water quality control plan or endangered species supporting regulatory requirements in the Delta at the time of the diversion.
- g. The diversion uses:
 - i. Either existing diversion infrastructure or temporary pumps;
 - ii. Existing groundwater recharge locations, where available;
 - iii. No new permanent infrastructure or permanent construction; and
 - iv. Simple screens installed on temporary pump intakes to minimize the impacts of diversion to salmon and other aquatic life.
- h. The person or entity availing itself of suspensions created by Paragraph 2 of Executive Order N-4-23 files a preliminary report with the Water Board and any applicable Groundwater Sustainability Agency (GSA) or GSAs for the basin, no later than 14 days after initially commencing diversion of flood flows for groundwater recharge, and a final report with the Water Board and any applicable GSA or GSAs for the basin no later than September 15, 2023. The preliminary and final reports required by this subparagraph shall:
 - i. Identify the person or entity utilizing the suspensions created by Paragraph 2 of Executive Order N-4-23;
 - ii. Identify the triggering condition from subparagraph (c) of this paragraph;
 - iii. Provide the GPS coordinates for the point of diversion, a map identifying the approximate area inundated by the flood flows, and the corresponding assessor parcel number(s);
 - iv. Identify the time when diversions of floodwaters to groundwater recharge commenced, and for final reports, when diversions ceased; and
 - v. Provide an estimate, as of the report's date, of the amount of floodwaters diverted utilizing the suspensions created by Paragraph 2 of Executive Order N-4-23.

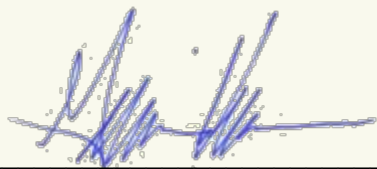
The Water Board shall post on its internet website all reports received pursuant to this subparagraph.

10. To mitigate the effects of the Late Winter Storms, including by reducing the risks of local catastrophic flooding in the Tulare Lake Basin, Part 2 (commencing with section 1200) of division 2 of the Water Code, exclusive of section 1225, and regulations adopted pursuant to that part, are suspended for diversions of flood flows into the Kern Intertie and ultimately into the California Aqueduct until August 31, 2023, such that applications and permits for water rights shall not be required for such diversions, nor shall such diversions create new water rights or modify existing water rights, to the extent applications or permits would have been required or water rights would have been affected absent this suspension.
11. The Department of Water Resources and State Water Resources Control Board shall (i) communicate to water systems and others any additional information or actions necessary for those systems and others to monitor and be prepared for the addition of Kern River floodwater in the California Aqueduct, and (ii) collaborate on long-term actions that align water rights and flood response, including actions that maximize in-basin groundwater recharge.

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

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 17th day
of May 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D
Secretary of State

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER N-10-23

WHEREAS the State has experienced over thirty atmospheric rivers since December 2022, resulting in compounding and cumulative impacts across California, including record or near record amounts of snow in the Sierra Nevada; and

WHEREAS on January 4, 2023, I proclaimed a State of Emergency to exist in California as a result of severe winter storms related to an atmospheric river event beginning on December 27, 2022; and

WHEREAS on March 1, March 8, March 12, March 14, March 28, April 20, May 15, and June 16, 2023, I proclaimed a State of Emergency to exist in 53 counties, cumulatively, as a result of a series of winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

WHEREAS on April 21, May 10, July 8, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions, and on February 13, 2023, I issued Executive Order N-3-23 and on March 10, 2023, I issued Executive Order N-4-23, to address evolving drought conditions due to the 2022-2023 Winter Storm Events and mitigate flooding by facilitating groundwater recharge; and

WHEREAS on March 31, 2023, I issued Executive Order N-6-23 to bolster the emergency response to the 2022-2023 Winter Storm Events, particularly in the Tulare Lake Basin that continues to be affected by historic flooding; and

WHEREAS on May 17, 2023, and on June 16, 2023, I issued Executive Order N-7-23 and N-9-23, respectively, to further bolster the emergency response to the 2022-2023 Winter Storm Events, in both the San Joaquin River and the Tulare Lake Basins; and

WHEREAS there remains a need for removal of floating vegetation and debris throughout impacted counties, including stretches of the Salinas River mainstem and tributaries, stretches of the Pajaro River mainstream and tributaries, and coastal streams along the Central Coast region from Santa Cruz County to Ventura County, and that removal must expeditiously occur before the next rainy season begins in fall 2023 in order to mitigate the risk of additional flooding and allow for continued recovery efforts; and

WHEREAS emergency repairs, debris removal, sediment removal, and vegetation management within waters of the United States are subject to federal approvals from the U.S. Army Corps of Engineers pursuant to section 404 of the federal Clean Water Act (33 U.S.C. § 1344), and the State Water Resources Control Board (Water Board) has previously issued state water quality certifications corresponding to the Corps Regional General Permits 8, 5, or 63 for Repair and Protection Activities in Emergency Situations and the Nationwide Permit 3 for Maintenance Part (a) for repair, rehabilitation, or replacement of structure of fill (collectively Emergency or Repair Corps Orders), which provide a

pathway for emergency activities in many instances (hereinafter referred to as Water Board Emergency or Repair 401 Certification Orders); and

WHEREAS under the provisions of 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 2022-2023 Winter Storm Events.

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, 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. All provisions contained in the above-referenced Proclamations of a State of Emergency and Executive Orders shall remain in full force and effect, except as modified or withdrawn in subsequent proclamations and orders.
2. To protect health, safety, and the environment, and to reduce the risks of local catastrophic flooding, with respect to activities that take place in the San Joaquin River and tributaries, the Tulare Lake Basin and tributaries, including, but not limited to, the Kings, Tule, Kaweah, and Kern Rivers, the Salinas River and tributaries, the Pajaro River and tributaries, and other coastal streams between the Pajaro River (Santa Cruz/Monterey/San Benito Counties), to and including the Ventura River (Santa Barbara/Ventura County), but excluding tributaries to such other coastal streams, the following are suspended, subject to the conditions in Paragraphs 3 and 4, as applicable:
 - a. Chapter 6 (commencing with section 1600) of Division 2 of the Fish and Game Code, and regulations adopted pursuant to that Chapter.
 - b. Certain statutes, rules, and requirements applicable to activities under the jurisdiction of the Water Board and the California Regional Water Quality Control Boards (Regional Water Boards) as follows:
 - i. For an activity in a water of the United States that receives an authorization by the U.S. Army Corps of Engineers pursuant to section 404 of the Clean Water Act, any enrollment criteria that may limit the permitting of the activity under a Water Board Emergency or Repair 401 Certification Order, including criteria limiting the scope to only the Emergency or Repair Corps Orders, conditioned on compliance with all other provisions set forth in the relevant Water Board Emergency or Repair 401 Certification Order.

- ii. For an activity not covered by paragraph 2.b.i, sections 13260 and 13263 of the Water Code, and regulations adopted pursuant to those sections.
 - c. Division 13 (commencing with section 21000) of the Public Resources Code, and regulations adopted pursuant to that division.
- 3. The suspensions in Paragraph 2 apply only to (i) the repair or replacement of existing levees, weirs, and other conveyance and flood-control infrastructure, (ii) debris removal, (iii) sediment removal, and (iv) vegetation management, provided that the activity meets all of the following conditions, as applicable:
 - a. The activity is necessary to respond to conditions caused by the 2022-2023 Winter Storm Events and is necessary to avoid future damage from high streamflow events in the upcoming rainy season.
 - b. Removal of sediment or vegetation or both serves to either reestablish a functional low flow channel or reestablish channel capacity, or clear sediment and debris from the river channel near structures such as bridges.
 - c. Removal of sediment or vegetation or both is carried out in a manner that (i) does not involve excavation resulting in the establishment of a new low flow channel that did not exist prior to the 2022-2023 Winter Storm Events, (ii) maintains the natural contour of the stream, (iii) maintains the downstream slope of the stream flow line, and (iv) does not impede fish passage or cause fish stranding.
 - d. Removal of sediment or vegetation or both is limited to portions of the channel that are dry.
 - e. No more than 30% of the total native vegetation within the stream channel and bank is removed from each river mile.
 - f. Levees are either set back from their previous location (increasing channel capacity) or are rebuilt as configured prior to the 2022-2023 Winter Storm Events.
 - g. The activity does not involve disposal or placement of flood-delivered sediments into waters of the state or at locations or in a manner where sediments may be washed into waters of the state by rainfall or runoff.
 - h. The activity minimizes impacts to beneficial uses of the water body.
 - i. The activity is completed by November 1, 2023.
- 4. The suspensions in Paragraph 2.b.ii apply only if the activity meets all of the following further conditions:

- a. The project proponent shall provide notice to the appropriate Regional Water Board as early as possible, and no less than forty- eight (48) hours prior to initiating the project, that includes the scope and location of the activity, a description of the infrastructure, debris, sediment, and vegetation conditions relevant to the activity, with representative photos, and, as applicable, a description of how the activity serves to establish a functional low flow channel or reestablish channel capacity.
- b. Following any accidental discharge of a reportable quantity of a hazardous material (as defined in Health and Safety Code section 25501), sewage, or an unknown material, the project proponent shall follow the notification and reporting procedures set forth in condition A.3.c of Water Quality Order No. 2019-0044-Exec Clean Water Act Section 401 Water Quality Certification and Order.
- c. The activity shall be undertaken so as to avoid causing a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters, as adopted in any applicable Regional Water Board or Water Board water quality control plan or state policy for water quality control, but in the event of a violation of water quality standards, the project proponent shall eliminate the source of any such discharge as soon as practicable. Water diversion activities must not result in the degradation of beneficial uses or exceedances of water quality objectives of any of the receiving waters. Any temporary dam or other constructed obstruction must only be built from materials that will cause little or no siltation (e.g., clean gravel). Normal flows must be restored to the affected water immediately upon completion of work at that location.
- d. If there is a violation of a water quality standard, the project proponent shall notify the applicable Regional Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means. This notification must be followed within three (3) working days by submission of a written report that includes the cause of the violation; the location shown on a map; and the period of the noncompliance including exact dates and times. If the noncompliance has not been corrected, include: the anticipated time it is expected to continue; the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and any monitoring results.
- e. If surface water is present, the project proponent shall conduct continuous visual surface water monitoring to detect accidental discharge of construction-related pollutants (e.g., oil and grease, turbidity plume, or uncured concrete).

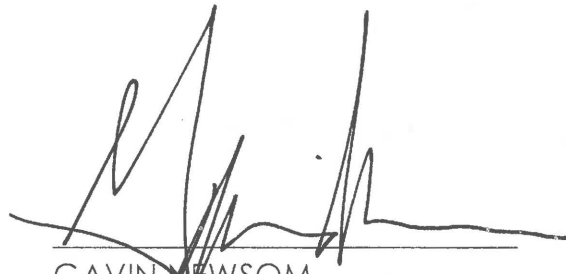
- f. The project proponent shall keep all repairs and construction to the minimum necessary to alleviate the emergency caused by the 2022- 2023 Winter Storm Events and limited to in-kind replacement or refurbishment of on-site features, although the project may undertake minor upgrading if bioremediation or other environmentally sensitive solutions are used.
 - g. The project proponent shall implement effective best management practices to control erosion and runoff from areas associated with the activity, including access roads. All areas of temporary impacts and all other areas of temporary disturbance that could result in a discharge or a threatened discharge to waters of the U.S. and/or state must be restored. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
 - h. Notification of completion, including representative photos showing completion, shall be submitted to the appropriate Regional Water Board within 30 days of completion of the activity.
- 5. To support adequate state staffing for all state agencies assigned response and/or recovery role related to the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County), consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the damage from the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County). Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.
- 6. The limitation for the period of employment for State Personnel Board emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County). The requirements

and period of employment for such appointments will be determined by the Office of Emergency Services but shall not extend beyond the termination date of the State of Emergency.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed with the Office of the Secretary of State and that widespread publicity and notice be given to 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 4th day of August 2023.

A handwritten signature in black ink, appearing to read 'Gavin Newsom', is written over a horizontal line.

GAVIN NEWSOM
Governor of California

ATTEST:

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



FEMA

Congressional Affairs Division
202-646-4500

STATE OF CALIFORNIA

FEDERAL DISASTER DECLARATION FACT SHEET

APRIL 3, 2023

Today, April 3, 2023, President Joseph R. Biden Jr., granted a Major Disaster Declaration for the State of California triggering the release of Federal funds to help individuals and communities recover from Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides that occurred February 21, 2023, and continuing. Details of the disaster declaration and assistance programs are as follows:

Declaration Number:	FEMA-4699-DR
Incident:	Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides
Incident Period:	February 21, 2023, and continuing
Federal Coordinating Officer:	Andrew F. Grant National FCO Program
Individual Assistance (IA):	(Assistance to individuals and households):
IA-Designated Counties:	Kern, Mariposa, Monterey, San Benito, Santa Cruz, Tulare, and Tuolumne Counties.
Public Assistance (PA):	(Assistance for emergency work and the repair or replacement of disaster-damaged facilities):
PA-Designated Counties:	Calaveras, Los Angeles, Monterey, and Tulare Counties.
Hazard Mitigation (HM):	(Assistance for actions taken to prevent or reduce long term risk to life and property from natural hazards):

HM-Designated Areas:

All areas in the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

OTHER:

Additional designations may be made at a later date if requested by the state and warranted by the results of further damage assessments.

###



LICENSE NUMBER	1221
----------------	------

LICENSE TO USE STATE MILITARY PROPERTY

BETWEEN

CALIFORNIA MILITARY DEPARTMENT

AND

The City of Porterville

FOR

USE OF READINESS CENTER IMPROVEMENTS AND GROUNDS

This AGREEMENT, dated for reference the 10th day of April 2023, by and between the California Military Department (CMD), hereinafter called STATE, and the City of Porterville, 291 North Main Street, Porterville, CA 93257, hereinafter called LICENSEE, without distinction as to number or gender, and effective upon execution by STATE. STATE and LICENSEE are sometimes referred to individually as a "party" or collectively as the "parties".

RECITALS

WHEREAS, the STATE has under its jurisdiction, certain real property known as the Porterville armory, located at 29 N. Plano St. Porterville, CA 93257, hereinafter called PREMISES, identified in **Exhibit "B"**, consisting of one (1) page and attached hereto and incorporated herein by this reference.; and,

WHEREAS, it is essential that STATE have a secure facility and surrounding grounds; and,

WHEREAS, PREMISES may be made available to meet the needs of the local civil authority when not required to meet immediate operational requirements;

NOW THEREFORE, STATE and LICENSEE agree as follows:

WITNESSETH

I.

GENERAL PROVISIONS

1. AGREEMENT is for non-exclusive weekday or weekend use throughout the license term.
2. Upon declaration of emergency by the STATE or federal government, STATE reserves the right to reoccupy PREMISES, including all parking areas, with twenty-four (24) hours written or electronic (voice or email) notice to LICENSEE at the notification address/number below.

3. PREMISES will not be available during the following drill periods: n/a
4. LICENSEE shall comply with all applicable statutes, laws, ordinances and rules or regulations adopted by the Federal, State or any City, City and County, County or other body politic pertaining to use of said premises or any provisions of the License.
5. LICENSEE shall comply with such reasonable rules and regulations as may be prescribed by STATE for the reasonable use and occupation of State Facilities.
6. LICENSEE understands and agrees the California Legislature may impose additional restrictions, limitations or conditions affecting AGREEMENT provisions or terms; however, any such changes become effective no sooner than 30 days after the legislature has acted.
7. This agreement shall not be assigned or sublet or otherwise encumbered, in whole or in part, without STATE'S prior written consent.
8. STATE shall supply PREMISES with utilities, the nominal cost of which is included in the use fee. Section VI (FEES), item #5 addresses extraordinary utility use and payment.
9. LICENSEE shall have use of the offices, storage areas, drill floor, latrines, showers, parking areas for placement of storage containers (if required), and kitchen counters solely for food preparation or distribution (no oven or stove top use). All food will be stored and surfaces cleaned on a daily basis when shelter operations are underway.
10. STATE is not responsible for losses or damage to personal property, equipment or materials of LICENSEE, its employees, agents or clients. LICENSEE shall report to STATE all losses immediately upon discovery.
11. LICENSEE shall not drive any nails, tacks, pins or other objects into the walls, ceilings, partitions, windows, woodwork, or any other part of PREMISES, nor in any manner move or change any fixture, nor make any alterations to PREMISES without STATE'S prior written consent.
12. Upon completion of use, LICENSEE shall remove all decorations, display, signs, and equipment on PREMISES.
13. Upon license expiration, LICENSEE will surrender PREMISES to STATE with appurtenances and fixtures in good order, condition, and repair, reasonable use and wear thereof, or Acts of God excepted.
14. LICENSEE shall not permit any alcoholic beverage to be offered for sale, stored, given away or otherwise disposed or consumed on any part of PREMISES, nor shall LICENSEE permit any use of tobacco products on any part of PREMISES or within twenty (20) feet of entrances, doorways or opening windows, except in a sufficiently distanced controlled area under LICENSEE supervision.
15. LICENSEE acknowledges PREMISES may not be fully ADA compliant and agrees to implement or improve, at its sole cost and expense, those necessary compliance measures required for the duration of its use. Furthermore, LICENSEE agrees to provide any and all required temporary emergency lighting required by State, County or City laws or ordinances.

II.

AUTHORIZED ACTIVITIES

1. LICENSEE is authorized to use PREMISES to provide temporary shelter and/or health and medical services to homeless citizens of the community.
2. LICENSEE may provide on-site program management through either LICENSEE employees, agents or volunteers or through contracted services.
3. LICENSEE agrees to clean PREMISES removing all litter, trash, cans, bottles, etc. from PREMISES after each use period, but not less than once per day.
4. LICENSEE shall provide janitorial services, whether from a licensed contractor or qualified civil service employee(s), to clean and sanitize the armory, including restrooms, showers, and drill floor, according to standards set forth in **Exhibit "F"**, made a part hereof by this reference. If civil service employees will not fulfill janitorial services, LICENSEE shall provide STATE a copy of the janitorial contract before commencement of licensed use.
5. The armory facility will be available twenty-four (24) hours each day unless otherwise approved by the STATE for extended periods during inclement weather conditions.
6. LICENSEE shall provide on PREMISES one hour before shelter opening until one hour after lights-out in the evening no less than one (1) appropriately licensed (guard card) and easily identifiable uniformed security officer. The security officer shall have access to a telephone, provided by LICENSEE, for contacting the appropriate law enforcement agency, should it become necessary. LICENSEE is responsible for protecting patrons, agents and invitees from acts of third parties, and agrees to notify STATE and appropriate law enforcement agencies as required.
7. Uniformed security personnel will check (search) each client for weapons and drug paraphernalia before any client may enter, or reenter the armory. On-site supervising soldiers are not security personnel and WILL NOT assist with weapon checks or other security-related actions; however, they will observe security inspections.
8. Security personnel will notify the military site supervisor or, if one is not available, the Area Coordinator or the STATE Program Manager before leaving PREMISES. A copy of the security contract will be due to the STATE before the license term begins.
9. Consistent with GC 15301.3(e), LICENSEE shall provide STATE a schedule of nightly shelter visits by law enforcement officers of the local jurisdiction within which the armory is located.
10. Any damage to PREMISES will be inspected by STATE representatives (CMD Area Coordinator) and LICENSEE to determine the character and extent of damage (with photographs). Repairs should be completed within twenty-four (24) hours if an emergency or seventy-two (72) hours if urgent.
11. The STATE Area Coordinator will contract for necessary repair or restoration services using appropriate state or federal guidance, while coordinating and collaborating closely with LICENSEE. LICENSEE may not undertake repairs or restoration using its own forces or contract services without the prior written

consent of STATE'S Area Coordinator.

12. Within thirty (30) days of being presented a demand (invoice) for payment, LICENSEE shall make STATE whole for the cost of repairing or restoring any improvement or utility damaged as a result of PREMISES shelter use. If significant plumbing issues occur due to repeated latrine clogging by clients, the LICENSEE will provide, at its sole cost or expense, portable latrines for the duration of the contract.
13. LICENSEE shall take all necessary steps to ensure shelter clients do not constitute a nuisance in the immediate vicinity of PREMISES during hours of shelter operation. If at any time the STATE is dissatisfied with the LICENSEE efforts, the LICENSEE and STATE shall meet to explore means and methods of compliance.
14. LICENSEE is solely responsible for supplying consumables including, but limited to cleaning or sanitizing supplies and equipment, liquid soap, paper towels, and toilet paper. LICENSEE affirms the County Health Department shall provide regular health screenings and consultation on sanitation issues as required or as otherwise requested.
15. The ONLY animals allowed inside PREMISES are service animals as defined in Section XIV below. Client pets or any other animal not meeting the definition of service animal must remain outside PREMISES at all times.
16. LICENSEE shall conform to the guidance and recommendations for tuberculosis prevention outlined in "*Preventing Tuberculosis (TB) in Homeless Shelters: A Guide for Preventing and Controlling TB and other Aerosol Transmissible Diseases in Los Angeles County Facilities*", included as **Exhibit "C"** herein and by this reference made a part hereof.
17. LICENSEE shall at all times conform to local or state (Governor's) orders for preventing COVID-19 infection by mandating mask wearing and organizing the site to conform to physical distancing requirements.
18. Before clients may park their vehicle in PREMISES parking area, LICENSEE shall ensure each has a valid vehicle registration and current insurance coverage.
19. Vehicles parked on PREMISES without appropriate approval shall be towed away by STATE's order and at LICENSEE's risk and expense.

III.

NOTIFICATION

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time. so long as such day is not a State or Federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To LICENSEE:

City of Porterville
Attn: City Manager
291 North Main Street
Porterville, CA 93257
(559) 782-7466

To STATE:

California Military Department
9800 Goethe Road, Box 18
Sacramento, CA 95826
(916) 854-3788

PROGRAM MANAGER:

SSG Monica Estrada
(916) 541-8160

Notice of change of address or telephone number shall be given by written notice in the manner described in this section. LICENSEE is obligated to notice State offices listed above and the failure to provide notice to do so shall constitute a lack of notice. Nothing contained herein shall preclude the giving of any such notice by personal service.

IV.

INSURANCE REQUIREMENTS

LICENSEE is a public entity, which is self-insured and will be responsible for any damage caused to PREMISES. Additionally, LICENSEE shall indemnify STATE against any injuries caused by use of PREMISES. LICENSEE has furnished the necessary Certificate of Self-Insurance, **Exhibit "D"** attached hereto and incorporated herein by this reference, demonstrating the required insurance coverage will be in effect during the complete term of AGREEMENT, and shall include, but not be limited to:

- Combined single limit liability of \$2,000,000, or
- Special event coverage with a limit of \$2,000,000, and
- A statement naming the United States, State of California, its officers, agents, employees, and servants as additional insured, but only with respect to the activities of the named insured.

V.

HOLD HARMLESS INDEMNIFICATION

The PREMISES are provided in "AS-IS" and "WITH ALL FAULTS" condition, and STATE and its employees, representatives and agents disclaim all warranties, expressed or implied, regarding the PREMISES, including, but not limited to, all implied warranties of merchantability or fitness for a particular purpose or compliance with Applicable Law. LICENSEES acknowledges and agrees that STATE and its employees, representatives and agents have made no representations or warranties for the PREMISES, including, without limitation, any representations or warranties regarding, (a) the condition or repair of the PREMISES, (b) whether such PREMISES are sufficient for the purposes of LICENSEE, or (c) whether the PREMISES comply with Applicable Laws (as defined below), including without limitation the Americans with Disabilities Act (ADA) or other accessibility laws, (d) whether there are any facts or conditions affecting the PREMISES that might, individually or in the aggregate, interfere with the use or occupancy of the

PREMISES or any portion thereof by LICENSEE.

The use of the PREMISES by LICENSEE shall be conclusive evidence that LICENSEE accepts the same "AS IS and WITH ALL FAULTS" and that the PREMISES are suited for the use intended by LICENSEE and are in good and satisfactory condition at the time such possession was taken. LICENSEE represents and warrants to STATE that (a) its sole intended use of the PREMISES is for temporary sheltering (the "Permitted Use") and (b) prior to using the PREMISES it has made such investigations as it deems appropriate with respect to the suitability of the PREMISES for its intended use and has determined that the PREMISES are suitable for such intended use.

LICENSEE shall comply with all applicable statutes, laws, ordinances and rules and regulations adopted by the Federal, State or any City, City and County, County or other body politic, including without limitation all building codes, the ADA or other accessibility laws ("Applicable Laws") and which pertains to use of the PREMISES or any provisions of the License, and will indemnify, defend and hold STATE free and harmless from and against any violations thereof and any and all liabilities, suits, causes of action, judgments, demands and claims for damages, including all reasonable costs of any litigation and attorney's fees and expenses, arising out or by reason of any such violation.

LICENSEE shall indemnify, defend and hold STATE its employees, representatives and agents free and harmless from and against any and all suits, causes of action, demands, proceedings, claims, damages, judgments, obligations liabilities, liens, fines, costs, and expenses (including, but not limited to, attorneys' fees and costs) (collectively "Losses") which arise from or are related to (a) use or occupancy of the PREMISES by LICENSEE or its Representatives, including, but not limited to, damage to property of any kind whatsoever and to whomsoever belonging, including LICENSEE, from any cause or causes whatsoever during the term of this License or any occupancy hereunder, holdover periods or any other occupancy of the PREMISES during the term of this License, except (i) those Losses that are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by sole gross negligence of the STATE or its employees, or (ii) to the extent any such Losses are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by the willful misconduct of the STATE or its employees; provided, however, any condition of the PREMISES that is found to be in violation of any Applicable Law by a court or administrative tribunal of competent jurisdiction shall not be deemed gross negligence or willful misconduct on the part of the STATE or its employees; (b) breach of LICENSEE'S obligations under the AGREEMENT, (c) negligence or other wrongful act by LICENSEE or its Representatives, (d) violation of Applicable Law by LICENSEE or its Representatives, (e) any allegation that the PREMISES do not comply with Applicable Law. "Representatives" means LICENSEE'S agents, employees, representatives, contractors, or any other person or persons acting within the direct control or authority of such party or its agents, employees, representatives or contractors.

VI.

FEES

1. The use fee is waived based on Services in Kind as per California Army National Guard Regulation 210-2 paragraph 9.
2. Extraordinary utility costs are waived during the term of this license.
3. Emergency 24 hour use of the facility is authorized through the request from the local Office of Emergency Services.

VII. TERM

License shall take effect no earlier than April 11, 2023 or upon execution by STATE, whichever is later, and shall expire no later than 0800 (8:00 A.M.) August 31, 2023.

VIII. AMENDMENT AND TERMINATION

AGEEMENT amendment or modification must be in writing and duly executed by the parties.

Either party may terminate AGEEMENT with 30 days written notification to the other at the addresses previously given. Upon termination, the activities of the parties shall be governed by the applicable provisions of the Military and Veterans Code. STATE is not obligated to reimburse LICENSEE any fees should it terminate this AGREEMENT before reaching its full term.

IX. ENTIRE AGREEMENT

AGREEMENT, along with any exhibits attached hereto, constitutes the entire covenant and understanding between STATE and LICENSEE for PREMISES. AGREEMENT supersedes all prior and contemporaneous routine activity agreements, representations or understandings, if any, whether oral or written.

X. DURATION & RENEWAL

AGREEMENT shall remain in effect through the termination date and will not be extended, but may be renewed annually subsequent to renegotiation required to protect the parties.

XI. RIGHT TO ENTER

During continuance in force of AGREEMENT, there shall be, and is hereby expressly reserved to STATE and to any of its contractors, agents, employees, representatives, or licensees, the right at any and all reasonable times, and any and all places to temporarily enter upon said PREMISES for inspection or other lawful STATE purposes.

XII. ENVIRONMENTAL LAWS AND REGULATIONS

LICENSEE must comply with all applicable local, State or Federal environmental provisions, requirements, ordinances, regulations or laws. AGREEMENT does not constitute any form of authorization, permit, or opinion with respect to the satisfaction thereof. LICENSEE agrees that it shall comply with all laws, federal, state, or local, existing during the term of this license pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

1. In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LICENSEE'S illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LICENSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.
2. Where the LICENSEE is found to be in breach of this Paragraph due to the issuance of a government order directing the LICENSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LICENSEE or any person acting under

LICENSEE'S direct control and authority, LICENSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

XIII.

DEFAULT

LICENSEE shall make all required payments to the STATE without deduction, default or delay. In the event of the failure of LICENSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LICENSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LICENSEE of such default, this License may, at the STATE'S sole discretion, be terminated.

In the event of termination of this License, it shall be lawful for STATE to reenter into and upon the PREMISES and every part thereof and to remove and store at LICENSEE's expense all property therefrom and to repossess and occupy the PREMISES. In the event STATE terminates this License pursuant to this Paragraph, the STATE shall not be required to pay LICENSEE any sum or sums whatsoever.

XIV.

SERVICE ANIMALS

Service Animal Defined by Title II and Title III of the ADA: (from the ADA National Network)

Under Title II and III of the ADA, service animals are **limited to dogs** individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual's disability. A doctor's letter does not turn an animal into a service animal.

Examples of animals fitting the ADA's definition of "service animal" because they have been **specifically trained to perform a task for the person with a disability**:

Guide Dog or Seeing Eye® Dog¹ is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.

Hearing or Signal Dog is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.

Psychiatric Service Dog is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects.

SigDOG (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).

Seizure Response Dog is a dog trained to assist a person with a seizure disorder. The dog may stand guard over the person during a seizure or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities and are not covered by federal laws protecting the use of service animals.

A public facility is not allowed to ask for documentation or proof a dog has been certified, trained, or licensed as a service animal. Staff on site may ask the following questions:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

No further questions should be asked regarding the disability or the animal, nor is it permissible to ask that the dog perform the task that grants it to be a service animal.

CONCURRENCE

INSTALLATION COMMANDER

DATE: _____

FOR THE ADJUTANT GENERAL

DATE: _____



CITY OF PORTERVILLE

DATE: 04/21/2023

**MEMORANDUM OF UNDERSTANDING FOR SHELTER SUPPORT
BETWEEN COUNTY OF TULARE AND CITY OF PORTERVILLE**

This Agreement, is effective as of April 11, 2023, (the "Agreement"), and is between The City of Porterville ("CITY"), a California municipal corporation, and the COUNTY OF TULARE, a political subdivision of the State of California ("COUNTY"), who agree as follows:

WHEREAS, CITY has entered into an arrangement with the California National Guard for use of the Armory space, with address of 29 N Plano St., Porterville, CA 93257 (the "Premises") for emergency shelter purposes; and

WHEREAS, COUNTY, along with its Health and Human Services Agency, desires to provide disaster relief support, including logistical support, shelter staffing, and meal support, solely for the purpose of the Premises being used as an emergency shelter in response to the March 2023 atmospheric river storms; and

WHEREAS, in order to provide said support, COUNTY is fully dependent upon the California Department of Social Services ("CDSS") fulfilling COUNTY'S request for logistical and funding support, of which COUNTY, upon receipt, will convey to CITY; and

WHEREAS, in the event that CDSS is unable to provide support, and/or CDSS or the American Red Cross is unable to provide operational support, COUNTY is unable to continue services alone and shall immediately terminate this Agreement; and

WHEREAS, COUNTY seeks to clarify the scope of services to be provided and set reasonable limits on the term of those services; and

WHEREAS, COUNTY agrees to provide, and CITY agrees to receive said services; and

WHEREAS, CITY opened the shelter on the Premises on April 11, 2023, and COUNTY began providing services as of April 11, 2023, and now seek to memorialize this exchange in writing;

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, the parties agree as follows:

1. **SERVICES.** COUNTY agrees to provide at its own expense, and CITY agrees to receive services at the Premises pursuant to this Agreement. COUNTY shall provide 24 hour, or agreed operational period staffing at the Premises, in which COUNTY will provide logistical support, shelter staffing, and meal support in conjunction with the California Department of Social Services and/or the American Red Cross. COUNTY will additionally provide social assistance via case management services Monday through Friday, 8 AM to 5 PM. COUNTY shall also provide 24 hour security at the site (Collectively, the "Services"). The parties may agree in writing to a shorter operational period.

CITY shall provide animal care and shelter for residents of the Premises, including kennels and food. CITY shall be providing laundry, bathroom, and shower services for the residents of the Premises. Except for as otherwise specified in Section 8.c., CITY shall provide janitorial services for the Premises, which shall be regularly available daily, and shall be available upon an immediate needs basis. CITY shall keep on-call maintenance technician that is able to respond to immediate maintenance needs.

Services will be performed to the satisfaction of COUNTY for purposes of reimbursement of COUNTY by the State or Federal government.

2. **TERM.** The Services contemplated in Section 1 shall be from April 11, 2023, to May 5, 2023.

The County's provision of staffing and support services shall end at 12:00 noon, and the County's provision of security services shall end at 5:00 p.m., on Friday, May 5, 2023.

Additionally, the Parties agree that this Agreement will terminate pursuant to Section 19 of this Agreement upon the exit of the California Department of Social Services' support of staffing of the Services.

3. **CONSIDERATION.** CITY and COUNTY agree that the services provided to the public are adequate and good consideration for this Agreement, and no monetary compensation is required for this Agreement.

4. **USE.** Upon commencement of the term, COUNTY staff shall be entitled entry onto the Premises to provide the Services.

5. **AGREEMENT TO USE FACILITIES.** The use of the Premises is defined as follows:

- a. Use of the Premises 24 hours a day for sheltering evacuees and animals; and
- b. Any other use to which the parties mutually agree.

6. **ACCEPTANCE.** On the date that the COUNTY begins providing services at the Premises, the Premises shall be in good condition. COUNTY commencing services on the Premises on the effective date shall constitute COUNTY's acknowledgment that, to the best of their knowledge, the Premises is in good condition.

7. **USE.** COUNTY shall use the Premises and shall not use it in any manner that will constitute waste or nuisance.

8. **MAINTENANCE.**

- a. CITY will provide, at CITY's expense, all ongoing maintenance, preventative maintenance, repair, and upkeep of the Premises, including, but not limited to, the parking areas, sidewalks, grounds, building and improvements, and equipment and fixtures attached thereto.

b. CITY will be responsible for complying with all codes or laws requiring alterations, maintenance or restoration of the Premises and parking areas during the term of the AGREEMENT, at no cost to COUNTY, including all ADA Standards for Accessible Design requirements and codes requiring fire extinguishers or other fire suppression equipment and related signage.

c. CITY will be responsible for cleaning the restrooms. COUNTY will be responsible for any cleaning or sanitization of rooms used, waiting rooms, and door handles.

d. In case of emergency the parties will take immediate steps to protect persons and property, consistent with their respective roles and responsibilities under this AGREEMENT. The CITY maintains responsibility to provide COUNTY with a facility that is fit for the purpose and intent of the AGREEMENT. If necessary repairs are brought to the CITY's attention by COUNTY, CITY will make repairs within the next ten (10) days. If the CITY does not take the necessary steps, COUNTY will have the right to repair and to be reimbursed by CITY.

9. **ALTERATIONS.** COUNTY shall not make any structural or exterior alterations to the Premises without CITY's or the California National Guard's consent; however, COUNTY shall have the right without cost to the CITY to make, with CITY's prior written consent, nonstructural alterations to the interior of the Premises that COUNTY requires in order to conduct its operations on the Premises, so long as those alterations are not prohibited by the terms and conditions of the CITY'S License Agreement with the California Military Department.

Upon termination of the AGREEMENT, if COUNTY is not then in default of any of the provisions of this AGREEMENT, COUNTY shall have the right to remove from the Premises immediately before the termination of the AGREEMENT, or within ten (10) days thereafter, any alterations COUNTY has made to the Premises, as long as the removal will not cause any structural

damage to the Premises, and COUNTY at its cost promptly restores any damage caused by the removal.

10. **UTILITIES.** CITY, in conjunction with the California National Guard, shall make all arrangements for, and pay for, all utilities and services furnished or to be used by COUNTY, including, without limitation, gas, electricity, water, sewer, trash, and for all connection charges, therefore. CITY and the California National Guard shall provide all fire extinguishers and related signs.

11. **INDEMNITY.** To the fullest extent permitted by law, CITY will hold harmless, defend and indemnify COUNTY and its officers, agents, volunteers, contractors, and employees from and against any liability, claims, actions, costs, damages, losses and expenses for injury, including without limitation, death of any person or damage to any property, including damage to animals; enforcement actions under California Prevailing Wage laws with respect to work done by CITY, or under other applicable statute or ordinance; or resulting from CITY's or CITY's agents', employees', contractors', or invitees' negligent or intentionally wrongful acts or omissions with respect to the Premises. CITY's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred during the term of this AGREEMENT, or any renewal or holdover period. This indemnification provision will survive the termination of this AGREEMENT.

To the fullest extent permitted by law, COUNTY will hold harmless, defend and indemnify CITY and its officers, agents, volunteers, contractors, and employees from and against any liability, claims, actions, costs, damages, losses and expenses for injury, including without limitation, death of any person or damage to any property, including damage to animals; enforcement actions under California Prevailing Wage laws with respect to work done by COUNTY, or under other applicable statute or ordinance; or resulting from COUNTY's or COUNTY's agents', employees', contractors', or invitees' negligent or intentionally wrongful acts or omissions with

respect to the Premises. COUNTY's obligation will continue beyond the expiration or termination of this Agreement as to any act or omission which occurred during the term of this AGREEMENT, or any renewal or holdover period. This indemnification provision will survive the termination of this AGREEMENT.

12. **INSURANCE.** CITY acknowledges and agrees that COUNTY is a self-insured entity and waives any requirement that COUNTY procure and/or maintain insurance of any kind, including liability and/or fire/extended coverage insurance. COUNTY acknowledges and agrees that CITY is a self-insured entity and waives any requirement that CITY procure and/or maintain insurance of any kind, including liability and/or fire/extended coverage insurance.

13. **DESTRUCTION.** In the event the Premises, or the building in which the Premises is located, is totally or partially destroyed by fire, earthquake, flood, or other casualty so as to render such property unfit for occupancy, in whole or in part, and that if it should reasonably appear that CITY cannot or will not restore or repair the Premises within ten (10) days from the date of such damage, either party shall be entitled to terminate the Agreement by giving the other party notice in writing of intention to so terminate ten (5) days before the proposed date of termination.

14. **CONDEMNATION.** If, during the AGREEMENT Term, there is any taking by condemnation of all or part of the building, other improvements, or land of which the Premises are a part, or any interest in the AGREEMENT, the rights and obligations of the parties shall be determined as follows:

a. If the Premises are totally taken by condemnation, the AGREEMENT shall terminate on the date of the taking;

b. If any portion of the Premises is taken by condemnation the AGREEMENT shall remain in effect, except that COUNTY may elect to terminate the AGREEMENT by giving notice of same within five (5) days of the date of the taking.

15. **ASSIGNMENT.** COUNTY shall not assign or encumber its interest in the AGREEMENT, all or any part of the Premises, without the consent of CITY, which consent may be withheld at CITY's absolute discretion.

16. **SIGNS.** COUNTY may not install, or permit any other person to install, any sign, awning, canopy, marquee or other advertising on any exterior wall, door, or window on the Premises.

17. **PARTIES'S ENTRY ON PREMISES.** The parties and their authorized representatives shall have the right to enter the Premises at all reasonable times.

18. **REMOVAL OF PERSONAL PROPERTY.** On expiration or other termination of the AGREEMENT, COUNTY shall remove all its personal property and shall perform all restoration made necessary by the removal of any alterations, fixtures, or signs.

19. **TERMINATION.** Either party may terminate this Agreement for cause upon fifteen (15) days' prior written notice to the other party. For purposes of this section, "cause" shall be defined as the failure of either party to remedy any material breach of the AGREEMENT within three (3) days' written notice of the breach. No material breach will be found for issues that this contract already provides a remedy for, so long as those remedies are timely undertaken.

COUNTY, may immediately terminate this Agreement upon written notice should the expenses associated with the Services be deemed to be non-reimbursable by the Federal Government or California State Government, as COUNTY will not be able to fund the scope of the Services considered in this Agreement without Federal or State reimbursement. Written notice of such determination of non-reimbursability shall be communicated by COUNTY to CITY as soon as possible.

COUNTY may immediately terminate this Agreement upon written notice should operational support from CDSS or the American Red Cross ceases, as COUNTY will not be able to provide such support on its own. This written notice shall be communicated by COUNTY to CITY as soon as possible.

COUNTY, as required by the Federal Emergency Management Agency ("FEMA") contract provisions, may terminate this Agreement without cause and shall provide CITY with seven (7) days written notice of the termination of this Agreement without cause.

20. **SUCCESSORS.** This Agreement shall be binding on, and inure to, the benefit of the parties, their successors and assigns, except as otherwise limited by this Agreement.

21. **NOTICE.** Any notice, demand, request, consent, approval or other communication required or permitted under this Agreement shall be in writing and must be either delivered in person or sent by certified mail, postage prepaid, to the follow addresses:

COUNTY: Board of Supervisors
County of Tulare Administration Building
2800 W. Burrel
Visalia, CA 93291
w/Copy to: Tulare County Office of Emergency Services
Attn: Andrew Lockman
5957 S. Mooney Blvd.
Visalia, CA 93277

CITY: John Lollis
291 N Main St,
Porterville, CA 93257

Notice shall be deemed communicated four (4) days from the time of mailing as provided in this section.

22. **ACCESS TO RECORDS.** The following access to records requirements apply to this AGREEMENT: a. The parties agree to provide each other, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to

any books, documents, papers, and records of the CITY and COUNTY which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The CITY agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The CITY agrees to provide the FEMA Administrator, or their authorized representatives, access to the Premises or other sites pertaining the scope of this AGREEMENT.

d. In compliance with the Disaster Recovery Act of 2018, the COUNTY and the CITY acknowledge and agree that no language in this AGREEMENT is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

23. DEBARMENT AND SUSPENSION. CITY certifies, by entering into this AGREEMENT, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this AGREEMENT by any federal agency or by any department, agency or political subdivision of the State of California. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of CITY. The CITY also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this AGREEMENT and is solely responsible for any paybacks and or penalties that might arise from non-compliance.

24. CHANGES. CITY and COUNTY, together the "Parties" agree that any changes made to this AGREEMENT must be formal written Agreement in the form of a Change Order to this AGREEMENT. Any Change Order must be submitted by the requesting party by at least seven

(7) days written notice to the other Party. Both the CITY and COUNTY must agree, in writing, to any changes to this AGREEMENT.

25. DEPARTMENT OF HOMELAND SECURITY SEALS/LOGOS. The CITY shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproduction of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

26. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. CITY acknowledges that FEMA financial assistance will be used to fund all or a portion of the AGREEMENT. CITY shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

27. NO OBLIGATION BY FEDERAL GOVERNMENT. The Federal Government is not a party to this AGREEMENT and is not subject to any obligation or liabilities to the COUNTY, CITY, or any other party pertaining to any matter resulting from this AGREEMENT.

28. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. CITY acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statement) applies to the CITY's actions pertaining to this AGREEMENT.

29. DISASTER SERVICE WORKERS. Emergency management personnel provided under this AGREEMENT are public employees, who during disaster situations, are declared under California Government Code section 3100, to be Disaster Service Workers. Work-related injuries will be handled by providing agency/jurisdiction under Worker's Compensation. Emergency management personnel must immediately report any injury suffered while deployed, to their assigned supervisor and home agency. Further, emergency management personnel provided by the CITY under this Agreement are Disaster Service Workers and employees of the CITY, and as such are provided the immunities, protections, and benefits of Disaster Service Workers, as provided in the California Emergency Services Act and other applicable law. Each

party shall defend, indemnify, and hold the other party, its officials, officers, employees, agents, and volunteers, harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damage arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officials, officers, employees, agents, or volunteers.

30. **WAIVER.** The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

31. **INTEGRATION.** This instrument contains all the Agreements of the parties relating to the Premises and cannot be modified or amended except by a subsequent Agreement in writing.

32. **NO THIRD-PARTY BENEFICIARIES.** Unless specifically set forth, the parties to this Agreement do not intend to provide any third-party benefit or enforceable legal or equitable right or remedy.

33. **GOVERNING LAW.** This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles.

34. **HEADINGS.** Paragraph headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

35. **INTERPRETATION.** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

36. CONFLICT WITH LAWS OR REGULATIONS; SEVERABILITY. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement will continue in full force and effect.

37. AUTHORITY. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind, and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right to enter into this Agreement and perform all of its obligations hereunder.

38. COUNTERPARTS. This Parties to this AGREEMENT may sign this AGREEMENT in counterparts, each of which is an original and all of which taken together form one single document. The counterparts of this AGREEMENT may be executed and delivered by facsimile or other electronic signature (including portable document format) by the Parties and the receiving Party may rely on the receipt of such document so executed and delivered

//

//

//

//

//

electronically or by facsimile as if the original had been received.

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

Date: _____

CITY OF PORTERVILLE

By: _____

John Lollis

City Manager

Approved as to form:

City Attorney

By: _____

**COUNTY
COUNTY OF TULARE**

By: _____

Jason T. Britt

Tulare County Emergency Services Director

Approved as to form:

County Counsel

By: A. Zahseen

Matter No. 2023359



Office of Emergency Services

5957 South Mooney Boulevard, Visalia, California 93277
(559) 624-7495 Telephone (559) 737-4692 Facsimile

April 14, 2023

Ms. Nancy Ward
Director, Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655

Dear Director Ward,

Tulare County appreciates the Office of Emergency Services' tireless work to support the response to and recovery from DR-4699 in our County and the surrounding region. Specifically, your negotiation of an ongoing incident period and the expeditious approval of individual assistance programs have been particularly valuable to the affected communities as we continue to recover from storm damages, repair distressed and weakened waterways, and prepare for the impending historic snowmelt runoff.

As current snow moisture content in local watersheds is estimated at over 300% of the historical average, total inflows to local reservoirs through April and July are expected to exceed three times the reservoir capacity. Local reservoir and waterway operators continue to aggressively release water at or near full capacity to make space for the anticipated inflows and prevent a return to spillway flows, while balancing needs of downstream operators to conduct emergency repairs. As a result, a number of homes, agricultural properties, and public spaces remain inundated with floodwater, and more homes may be affected because of the new snowmelt conditions. Specifically, we anticipate similar or worse conditions as a result of the snowmelt.

Tulare County is concerned that current sheltering for individuals affected by inundation and/or evacuation orders, including previously displaced individuals who remain under an evacuation order, may be limited in duration, especially during the current intervening period between storm and snowmelt-induced flooding incidents within the disaster.

Tulare County has entered into an agreement with the City of Porterville to maintain the last remaining emergency evacuation shelter site in the County. The California Department of Social Services and Volunteer Emergency Services Team have pledged support to provide staff and services for only two weeks at this shelter. Forty Tulare County residents who have been displaced due to flood activities are staying at this site. Because the support from CDSS and VEST is limited, the County is concerned that it may not be able to continually fund and staff the ongoing shelter projects. Our concern is the ongoing financial and logistical burden to the County and the incorporated cities therein.

As we are sure that you are aware, emergency protective measures, flood control activities, and damage assessments are being conducted because of the flood conditions in Tulare County. These efforts go hand-in-hand with ensuring that County residents are safe,



Office of Emergency Services

5957 South Mooney Boulevard, Visalia, California 93277
(559) 624-7495 Telephone (559) 737-4692 Facsimile

fed, and warm. The State's cooperation in keeping funding and support from the Department of Social Services and VEST beyond the initial two weeks available for emergency sheltering of Tulare County Residents is vital. Your support in ensuring ongoing funding and logistical support for these critical emergency protective measures is greatly appreciated.

Sincerely,

A handwritten signature in black ink, reading "Andrew Lockman", with a stylized flourish at the end.

Andrew Lockman
Office of Emergency Services Manager



LICENSE NUMBER	1221
----------------	------

LICENSE TO USE STATE MILITARY PROPERTY

BETWEEN

CALIFORNIA MILITARY DEPARTMENT

AND

The City of Porterville

FOR

USE OF READINESS CENTER IMPROVEMENTS AND GROUNDS

This AGREEMENT, dated for reference the 10th day of April 2023, by and between the California Military Department (CMD), hereinafter called STATE, and the City of Porterville, 291 North Main Street, Porterville, CA 93257, hereinafter called LICENSEE, without distinction as to number or gender, and effective upon execution by STATE. STATE and LICENSEE are sometimes referred to individually as a "party" or collectively as the "parties".

RECITALS

WHEREAS, the STATE has under its jurisdiction, certain real property known as the Porterville armory, located at 29 N. Plano St. Porterville, CA 93257, hereinafter called PREMISES, identified in **Exhibit "B"**, consisting of one (1) page and attached hereto and incorporated herein by this reference.; and,

WHEREAS, it is essential that STATE have a secure facility and surrounding grounds; and,

WHEREAS, PREMISES may be made available to meet the needs of the local civil authority when not required to meet immediate operational requirements;

NOW THEREFORE, STATE and LICENSEE agree as follows:

WITNESSETH

I.

GENERAL PROVISIONS

1. AGREEMENT is for non-exclusive weekday or weekend use throughout the license term.
2. Upon declaration of emergency by the STATE or federal government, STATE reserves the right to reoccupy PREMISES, including all parking areas, with twenty-four (24) hours written or electronic (voice or email) notice to LICENSEE at the notification address/number below in Section III; "Notification".

3. LICENSEE shall comply with all applicable statutes, laws, ordinances and rules or regulations adopted by the Federal, State or any City, City and County, County or other body politic pertaining to use of said premises or any provisions of the License.
4. LICENSEE shall comply with such reasonable rules and regulations as may be prescribed by STATE for the reasonable use and occupation of State Facilities.
5. LICENSEE understands and agrees the California Legislature may impose additional restrictions, limitations or conditions affecting AGREEMENT provisions or terms; however, any such changes become effective no sooner than 30 days after the legislature has acted.
6. This agreement shall not be assigned or sublet or otherwise encumbered, in whole or in part, without STATE'S prior written consent.
7. STATE infrastructure shall supply PREMISES with utilities, but LICENSEE will transfer utility accounts into its name for payment: electric, sewer, water, refuse collection.
8. LICENSEE shall have use of the offices, storage areas, drill floor, latrines, showers, parking areas for placement of storage containers (if required), and kitchen counters solely for food preparation or distribution (no oven or stove top use). All food will be stored and surfaces cleaned on a daily basis when shelter operations are underway.
9. STATE is not responsible for losses or damage to personal property, equipment or materials of LICENSEE, its employees, agents or clients. LICENSEE shall report to STATE all losses immediately upon discovery.
10. LICENSEE shall not drive any nails, tacks, pins or other objects into the walls, ceilings, partitions, windows, woodwork, or any other part of PREMISES, nor in any manner move or change any fixture, nor make any alterations to PREMISES without STATE'S prior written consent.
11. Upon completion of use, LICENSEE shall remove all decorations, display, signs, and equipment on PREMISES.
12. Upon license expiration, LICENSEE will surrender PREMISES to STATE with appurtenances and fixtures in good order, condition, and repair, reasonable use and wear thereof, or Acts of God excepted.
13. LICENSEE shall not permit any alcoholic beverage to be offered for sale, stored, given away or otherwise disposed or consumed on any part of PREMISES, nor shall LICENSEE permit any use of tobacco products on any part of PREMISES or within twenty (20) feet of entrances, doorways or opening windows, except in a sufficiently distanced controlled area under LICENSEE supervision.
14. LICENSEE acknowledges PREMISES may not be fully ADA compliant and agrees to implement or improve, at its sole cost and expense, those necessary compliance measures required for the duration of its use. Furthermore, LICENSEE agrees to provide any and all required temporary emergency lighting required by State, County or City laws or ordinances.

II.

AUTHORIZED ACTIVITIES

1. In order to provide a variety of health, medical or other services to homeless citizens, LICENSEE may provide on-site program management through either LICENSEE employees, agents, volunteers or contracted services.
2. The armory facility will be available twenty-four (24) hours each day unless otherwise amended in writing by the STATE.
3. LICENSEE is solely responsible for protecting employees, patrons, agents, clients, or invitees from acts of third parties, and agrees to notify STATE and appropriate law enforcement agencies as required.
4. LICENSEE agrees to maintain PREMISES in a clean and habitable condition, which includes exterior landscape maintenance and removal of all litter, trash, cans, bottles, etc. from the site not less than once per day.
5. Any damage to PREMISES will be inspected by STATE representatives (CMD Area Coordinator) and LICENSEE to determine the character and extent of damage (with photographs). Repairs should be completed within twenty-four (24) hours if an emergency or seventy-two (72) hours if urgent.
6. The STATE Area Coordinator will contract for necessary repair or restoration services using appropriate state or federal guidance, while coordinating and collaborating closely with LICENSEE. LICENSEE may not undertake repairs or restoration using its own forces or contract services without the prior written consent of STATE'S Area Coordinator.
7. Within thirty (30) days of being presented a demand (invoice) for payment, LICENSEE shall make STATE whole for the cost of repairing or restoring any improvement or utility damaged as a result of PREMISES use.
8. If significant plumbing issues occur due to continued actions of clients, LICENSEE will provide portable latrines, at its sole cost and expense, for the duration of the contract.
9. LICENSEE shall take all necessary steps to ensure clients do not constitute a nuisance in the immediate vicinity of the facility during hours of operation. If at any time the STATE is dissatisfied with the LICENSEE efforts, the LICENSEE and STATE shall meet to explore means and methods of compliance.
10. LICENSEE shall supply consumable sanitary items and paper products, which include, but not limited to: cleaning/sanitizing supplies and equipment, liquid soap, paper towels, and toilet paper. If requested (necessary), the County Health Department shall provide periodic health screenings and consultation on issues pertaining to sanitation
11. Pets of clients occupying PREMISES or participating in provided services are prohibited inside the PREMISES, with the exception of those meeting the definition of "service animal" in Section XV below.
12. LICENSEE shall ensure clients provide valid vehicle registration and insurance BEFORE parking their vehicle in PREMISES parking area.
13. Vehicles parked on PREMISES without appropriate approval shall be towed away by STATE's order and at LICENSEE's risk and expense.

III.

NOTIFICATION

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time, so long as such day is not a State or Federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To LICENSEE:

City of Porterville
Attn: City Manager
291 North Main Street
Porterville, CA 93257
(559) 782-7466

To STATE:

California Military Department
9800 Goethe Road, Box 18
Sacramento, CA 95826
(916) 854-3788

PROGRAM MANAGER:

SSG Monica Estrada
(916) 541-8160

Notice of change of address or telephone number shall be given by written notice in the manner described in this section. LICENSEE is obligated to notice State offices listed above and the failure to provide notice to do so shall constitute a lack of notice. Nothing contained herein shall preclude the giving of any such notice by personal service.

IV.

INSURANCE REQUIREMENTS

LICENSEE is a public entity, which is self-insured and will be responsible for any damage caused to PREMISES. Additionally, LICENSEE shall indemnify STATE against any injuries caused by use of PREMISES. LICENSEE has furnished the necessary Certificate of Self-Insurance, **Exhibit "D"** attached hereto and incorporated herein by this reference, demonstrating the required insurance coverage will be in effect during the complete term of AGREEMENT, and shall include, but not be limited to:

- Combined single limit liability of \$2,000,000, or
- Special event coverage with a limit of \$2,000,000, and
- A statement naming the United States, State of California, its officers, agents, employees, and servants as additional insured, but only with respect to the activities of the named insured.

V.

HOLD HARMLESS INDEMNIFICATION

The PREMISES are provided in "AS-IS" and "WITH ALL FAULTS" condition, and STATE and its employees, representatives and agents disclaim all warranties, expressed or implied, regarding the PREMISES, including, but not limited to, all implied warranties of merchantability or fitness for a particular purpose or compliance with Applicable Law. LICENSEES acknowledges and agrees that STATE and its employees, representatives and agents have made no representations or warranties for the PREMISES, including, without limitation, any representations or warranties regarding, (a) the condition or repair of the PREMISES, (b) whether such PREMISES are sufficient for the purposes of LICENSEE, or (c) whether the PREMISES comply with Applicable Laws (as defined below), including without limitation the Americans with Disabilities Act (ADA) or other accessibility laws, (d) whether there are any facts or conditions affecting the PREMISES that might, individually or in the aggregate, interfere with the use or occupancy of the PREMISES or any portion thereof by LICENSEE.

The use of the PREMISES by LICENSEE shall be conclusive evidence that LICENSEE accepts the same "AS IS and WITH ALL FAULTS" and that the PREMISES are suited for the use intended by LICENSEE and are in good and satisfactory condition at the time such possession was taken. LICENSEE represents and warrants to STATE that (a) its sole intended use of the PREMISES is for temporary sheltering (the "Permitted Use") and (b) prior to using the PREMISES it has made such investigations as it deems appropriate with respect to the suitability of the PREMISES for its intended use and has determined that the PREMISES are suitable for such intended use.

LICENSEE shall comply with all applicable statutes, laws, ordinances and rules and regulations adopted by the Federal, State or any City, City and County, County or other body politic, including without limitation all building codes, the ADA or other accessibility laws ("Applicable Laws") and which pertains to use of the PREMISES or any provisions of the License, and will indemnify, defend and hold STATE free and harmless from and against any violations thereof and any and all liabilities, suits, causes of action, judgments, demands and claims for damages, including all reasonable costs of any litigation and attorney's fees and expenses, arising out or by reason of any such violation.

LICENSEE shall indemnify, defend and hold STATE its employees, representatives and agents free and harmless from and against any and all suits, causes of action, demands, proceedings, claims, damages, judgments, obligations liabilities, liens, fines, costs, and expenses (including, but not limited to, attorneys' fees and costs) (collectively "Losses") which arise from or are related to (a) use or occupancy of the PREMISES by LICENSEE or its Representatives, including, but not limited to, damage to property of any kind whatsoever and to whomsoever belonging, including LICENSEE, from any cause or causes whatsoever during the term of this License or any occupancy hereunder, holdover periods or any other occupancy of the PREMISES during the term of this License, except (i) those Losses that are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by sole gross negligence of the STATE or its employees, or (ii) to the extent any such Losses are ultimately determined by a court or administrative tribunal of competent jurisdiction to be caused by the willful misconduct of the STATE or its employees; provided, however, any condition of the PREMISES that is found to be in violation of any Applicable Law by a court or administrative tribunal of competent jurisdiction shall not be deemed gross negligence or willful misconduct on the

part of the STATE or its employees; (b) breach of LICENSEE'S obligations under the AGREEMENT, (c) negligence or other wrongful act by LICENSEE or its Representatives, (d) violation of Applicable Law by LICENSEE or its Representatives, (e) any allegation that the PREMISES do not comply with Applicable Law. "Representatives" means LICENSEE'S agents, employees, representatives, contractors, or any other person or persons acting within the direct control or authority of such party or its agents, employees, representatives or contractors.

VI.

FEES

1. The use fee is waived based on Services in Kind as per California Army National Guard Regulation 210-2 paragraph 9.
2. Utility accounts will be transferred to LICENSEE, which will directly pay utility costs on an as-incurred basis.

VII.

TERM

License shall take effect no earlier than May 5, 2023 or upon execution by STATE, whichever is later, and shall expire no later than 0800 (8:00 A.M.) May 4, 2024.

VIII.

AMENDMENT AND TERMINATION

AGREEMENT cannot be amended or modified in any way except by a written AGREEMENT duly executed by STATE and LICENSEE. Any proposal for amendment or modification must be delivered for review and approval by the Chief, Realty Operations or her/his delegatee.

AGREEMENT may be terminated by either party upon 30 days' written notification to the other party at the addresses previously given in Section III; "Notification". Upon termination, the activities of the parties shall be governed by the applicable provisions of the Military and Veterans Code. STATE is not obligated to reimburse LICENSEE any fees should it terminate this AGREEMENT before reaching its full term.

IX.

ENTIRE AGREEMENT

AGREEMENT, along with any exhibits attached hereto, constitutes the entire covenant and understanding between STATE and LICENSEE for PREMISES. AGREEMENT supersedes all prior and contemporaneous routine activity agreements, representations or understandings, if any, whether oral or written.

X.

DURATION & RENEWAL

AGREEMENT shall remain in effect through the termination date and will not be extended, but may be renewed annually subsequent to renegotiation required to protect the parties.

XI.

RIGHT TO ENTER

During continuance in force of AGREEMENT, there shall be, and is hereby expressly reserved to STATE and to any of its contractors, agents, employees, representatives, or licensees, the right at any and all reasonable times, and any and all places to temporarily enter upon said PREMISES for inspection or other lawful STATE purposes.

XII.

ENVIRONMENTAL LAWS AND REGULATIONS

LICENSEE must comply with all applicable local, State or Federal environmental

provisions, requirements, ordinances, regulations or laws. AGREEMENT does not constitute any form of authorization, permit, or opinion with respect to the satisfaction thereof. LICENSEE agrees that it shall comply with all laws, federal, state, or local, existing during the term of this license pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

1. In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LICENSEE'S illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LICENSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.
2. Where the LICENSEE is found to be in breach of this Paragraph due to the issuance of a government order directing the LICENSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LICENSEE or any person acting under LICENSEE'S direct control and authority, LICENSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

XIII.

DEFAULT

LICENSEE shall make all required payments to the STATE without deduction, default or delay. In the event of the failure of LICENSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LICENSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LICENSEE of such default, this License may, at the STATE'S sole discretion, be terminated.

In the event of termination of this License, it shall be lawful for STATE to reenter into and upon the PREMISES and every part thereof and to remove and store at LICENSEE's expense all property therefrom and to repossess and occupy the PREMISES. In the event STATE terminates this License pursuant to this Paragraph, the STATE shall not be required to pay LICENSEE any sum or sums whatsoever.

XIV.

SERVICE ANIMALS

Service Animal Defined by Title II and Title III of the ADA: (from the ADA National Network)

Under Title II and III of the ADA, service animals are **limited to dogs** individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual's disability. A doctor's letter does not turn an animal into a service animal.

Examples of animals fitting the ADA's definition of "service animal" because they have been **specifically trained to perform a task for the person with a disability:**

Guide Dog or Seeing Eye® Dog¹ is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.

Hearing or Signal Dog is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.

Psychiatric Service Dog is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects.

SigDOG (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).

Seizure Response Dog is a dog trained to assist a person with a seizure disorder. The dog may stand guard over the person during a seizure or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, **they are not considered service animals under the ADA**. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities and are not covered by federal laws protecting the use of service animals.

A public facility is not allowed to ask for documentation or proof a dog has been certified, trained, or licensed as a service animal. Staff on site may ask the following questions:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

No further questions should be asked regarding the disability or the animal, nor is it permissible to ask that the dog perform the task that grants it to be a service animal.

CONCURRENCE

FOR THE ADJUTANT GENERAL



CITY OF PORTERVILLE

DATE: _____

DATE: 05/17/2023



FEMA

4699-DR-CA Amendment 006



English

Notice Date	July 10, 2023
--------------------	---------------

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4699-DR]

[Docket ID FEMA-2023-0001]

California; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA-4699-DR), dated April 3, 2023, and related determinations.

DATE: This amendment was issued July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 10, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

Deanne Criswell,

Administrator,

Federal Emergency Management Agency.

Last updated July 14, 2023

[Return to top](#)

Disasters & Assistance

Grants

Floods & Maps

Emergency Management

About

Work With Us



FEMA

[Contact FEMA](#)



FEMA.gov

An official website of the U.S. Department of Homeland Security

[Accessibility](#)

[Accountability](#)

[Careers](#)

[Civil Rights](#)

[Contact Us](#)

[FOIA](#)

[Glossary](#)

[No FEAR Act](#)

[Plug-Ins](#)

[Privacy](#)

[Report Disaster Fraud](#)

[Website Information](#)

[DHS.gov](#)

[USA.gov](#)

[Inspector General](#)

**National
Terrorism
Advisory
System**

RESOLUTION NO. 15 -2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE AUTHORIZING THE APPROPRIATION OF FUNDS FROM THE
CATASTROPHIC / EMERGENCY RESERVE FOR THE COSTS ASSOCIATED
WITH THE RESPONSE TO THE LOCAL FLOOD EMERGENCY**

WHEREAS: Pursuant to Chapter 9 of the Porterville Municipal Code, Mayor Martha A. Flores declared the existence of a local emergency within the City of Porterville on March 13, 2023 due to the threat to life and property caused by a series of storms impacting Success Lake significantly increasing the Tule River flows; and

WHEREAS: Flood water and water from Success Lake had caused evacuation warnings and mandatory evacuation orders in the month of March for some local residents; and

WHEREAS: Historic water levels and flows of the Tule River have caused erosion to the river banks, prompting City staff to take extraordinary measures to protect the riverbanks and avoid potentially catastrophic flooding;

WHEREAS: The significant threat of local flooding emergency continues to exist with the estimated snow pack in the Sierra Nevada mountains of more than three hundred percent (300%) of normal and the potential for a warm storm or heat wave this Spring; and

WHEREAS: The City of Porterville Municipal Code Section 2-31.2, established the Catastrophic / Emergency Reserve Fund for the purpose of providing funds to mitigate costs associated with unforeseen emergencies, including natural disasters or catastrophic events;

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council of the City of Porterville make a finding that the local flood emergency is an unforeseen and unavoidable event that require the expenditure of City resources beyond those provided for in the annual budget; and
2. That the City Council of the City of Porterville does hereby approve and authorize the appropriation of funds from the Catastrophic / Emergency Reserve Fund for the costs associated with the response to the local emergency including personnel, equipment, services, and other necessary expenditures; and
3. That the City Council authorize the replacement of funds from any grant funds that may be used to reimburse said costs.

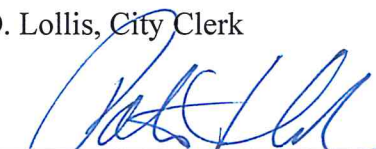
PASSED, APPROVED AND ADOPTED this 4th day of April, 2023.



Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: 

Patrice Hildreth, Chief Deputy City Clerk

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

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 4th day of April, 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

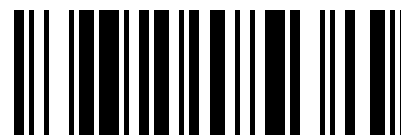
By: 
Fernando Gabriel-Moraga, Deputy City Clerk

Invoice

Calwen Inc. dba Rescue Source & Rescue 3 Intl

Calwen Inc. dba Rescue Source & Rescue 3
P.O. Box 1050
Wilton, CA 95693
Phone: 916-687-6556
Fax: 916-687-6717
Email: info@rescuesource.com

Order #	Date
131282	03/20/2023



Bill To:
PORTERVILLE FIRE DEPARTMENT 40 W CLEVELAND PORTERVILLE, CA 93257 Phone: 559-782-7526 Email: jrodriguez@ci.porterville.ca.us
Customer: PORTERVILLE FIRE DEPARTMENT

Ship To:
PORTERVILLE FIRE DEPARTMENT 40 W CLEVELAND PORTERVILLE, CA 93257
Contact: JANIE RODRIGUEZ PO Number: 23-22733

Sales Rep	Payment Terms	FOB Point	Carrier	Ship Service	Date Scheduled
MELISSA	NET 30	Origin	UPS Next Day Air		03/20/2023

Item #	Type	Number	Description	Unit Price	Qty Ordered	Total Price
1	Kit	KT2210	PFD TYPE V PACKAGE	\$250.00	20 ea	\$ 5,000.00
2	Sale	PF4026R	NRS 2022 RAPID RESCUER RED	\$0.00	20 ea	\$ 0.00
3	Sale	KN2556OR	NRS PILOT KNIFE ORANGE	\$0.00	20 ea	\$ 0.00
4	Sale	WH7905	WHISTLE-RESCUE 3 LOGO WITH COIL	\$0.00	20 ea	\$ 0.00
5	Sale	HL7050HVL/XL	RQ3 STORM PRO HELMET HI VIS LARGE/XLARGE	\$32.00	20 ea	\$ 640.00
6	Shipping	Freight	Freight Out	\$256.00	1 ea	\$ 256.00
7	Sale	Tax Expense	Tax Expense	\$521.70	1 ea	\$ 521.70

Subtotal:	\$6,417.70
Sales Tax:	\$0.00
Total:	\$6,417.70

Thank you for your order.
If you have any questions please call 800-457-3728
or e-mail info@rescuesource.com.

Royal Restrooms

A Regal Portable Restroom Experience

INVOICE # 04-12-2023

BILL TO: Portable Restrooms

dmoore@ci.porterville.ca.us

(559) 782-7539

Livermore, Ca 94551

Fax:(925) 337-8878

Cage Code 5HJ93

DESCRIPTION	T	AMOUNT
1 Single ADA Shower/Restroom Combo	t	\$4,250.00
1 Three Stall Shower/Restroom Combo	t	\$4,850.00
Delivery	t	\$100.00
Installation and Removal		\$2,500.00
Before/After Hours or Same Day Services		\$600.00

Due upon receipt-----For Royal Restrooms of California [W9 Click here.](#)

Make all checks payable to Royal Restrooms of California. If payment is not received per terms of agreement signed, applicable late fees will be applied. If you have any questions concerning this invoice, call Us at 877-922-9980 california@royalrestroomscs.com

THANK YOU FOR YOUR BUSINESS!

TAXABLE SUBTOTAL	\$9,200.00
TAX RATE	9.250%
SALES TAX	\$851.00
NON TAXABLE SUBTOTAL	\$3,100.00
TOTAL	\$13,151.00

TOTAL



INVOICE

24/7 Emergency 800-742-7246
www.rainforrent.com

Rain For Rent
Bakersfield
4001 State Rd
Bakersfield CA 93308
United States
661-399-1724

Your sales person	REMIT PAYMENTS TO:
JESSE PINTOR	Rain for Rent RAIN FOR RENT FILE 52541 LOS ANGELES, CA 90074-2541

CONTRACT # 1169502 CUSTOMER CITY OF PORTERVILLE CUSTOMER # 112354 NAME CITY OF PORTERVILLE ADDRESS 291 N MAIN ST PORTERVILLE CA 93257 PHONE	INVOICE# 1854595	INVOICE DATE 3/30/2023	PO or JOB# 23-22734	PAYMENT DUE 4/29/2023
PLEASE PAY				\$77,396.67
SHIPPED TO JOBSITE:				
NAME CITY OF PORTERVILLE ADDRESS Corporation Yard 555 N Prospect St Porterville CA 93257 PHONE				

Notes:

Requested by: Michael Knight
PO Number: 23-22734

QTY	UOM	DESCRIPTION	PRODUCT #	STATUS	DATE OUT	BILLED THRU	DAYS BILLED	PRICE	AMOUNT	TAXABLE
1.00	EA	Pump BA150E D285 Tlr Mt Diesel Eng Hatz 4H50TIC	1022734		SALES		0.00	\$65,685.06	\$65,685.06	Y
1.00	EA	Shipping/Handling Freight	M240			SERVICES	0.00	\$5,158.57	\$5,158.57	Y

TOTAL SALES:	\$65,685.06
TOTAL RENTALS:	\$0.00
TOTAL SERVICES:	\$5,158.57
TOTAL OTHER:	\$0.00
SUBTOTAL:	\$70,843.63
TAX:	\$6,553.04

TOTAL:	\$77,396.67
---------------	--------------------

FOR PROPER CREDIT, PLEASE INCLUDE INVOICE NUMBER ON YOUR PAYMENT.
PAST DUE AMOUNTS ARE SUBJECT TO A SERVICE CHARGE OF 1.50%
CUSTOMER, (RENTEE OR BUYER as context requires), shall be deemed to accept
all terms, conditions and provisions hereof upon execution of this agreement;
ordering; or delivery of equipment to customer, whichever comes first.

PAYMENT TERMS: NET 30

SIGNATURE: _____ DATE: _____

Mike Clark Trucking
19385 Avenue 144
Porterville, CA 93257 US
+1 5597845486
mct3desk1@yahoo.com



INVOICE

BILL TO

City of Porterville
Street Superintendent, Field
Service Div.
555 N. Prospect
Porterville, Ca 93257

INVOICE # 2637**DATE** 03/23/2023**DUE DATE** 04/25/2023**TERMS** Net 30

DATE	FREIGHT	ACTIVITY	FREIGHT BILL	RATE	AMOUNT
03/23/2023	8.80	Super 10	7383117 - Luque	120.00	1,056.00
03/23/2023	9.70	Super 10	7383219 - Luque	120.00	1,164.00
03/23/2023	9.70	Super 10	7383046 - Luque	120.00	1,164.00
03/23/2023	9.80	Super 10	8432857 - Luque	120.00	1,176.00
03/23/2023	7.30	Super 10	9281272 - Luque	120.00	876.00

Thank you for your business!

SUBTOTAL	5,436.00
TAX	0.00
TOTAL	5,436.00
BALANCE DUE	\$5,436.00

A finance charge of 1.5% monthly/18% annually will be charged on accounts over 30 days past due. In the event a suit is brought to enforce collection, the customer shall be liable for responsible attorneys fees and costs of the suit.



Name of person in charge: Amy Greybehl

Event Date: Start 5/5/23 month to month Price Per Guard: _____

Event Time: 8pm-8am How many guests: open

(Overtime is billed at \$35 per hour) _____ Invite Only: Y/N

Event Location: 29 ~~44~~ Plano St

City: Porterville State: CA

Zip: 93257 Special Instructions/ Directions for Event:

2 guards, check-in Guest by 8pm, lock gates, lights off by 10pm.

Balance Due for guaranteed hours \$: 18,000 - updated

Third Party Information- Please Print Clearly

Financially Responsible Party (Client):

City of Porterville - Army National Guard

Clients Contact Phone

Number: 559-782-7521

Client Email

Address: agreybehl@ci.porterville.ca.us

Clients Home

Address: City

City: Porterville State: CA Zip: 93257

Wedding/Prom/ Anniversary? Other: _____

Payment Information:

The parties have read all pages of this Agreement & the attached Terms and Conditions, agree to all its terms, and acknowledge receipt of a complete copy of the Agreement and Terms & Conditions. Each person signing as the Client below shall be responsible for ensuring that full payment is made as stated in this document. Client agrees that a 30% non-refundable retainer will be due immediately to reserve date and time as listed on contract.

Venmo: _____ @Chris-Morton-80 Zelle: _____ (559)756-4570

Cashapp: _____ \$maddym90 Check: X* Cash: _____

*Payment to be issued upon completion of a City of Porterville Business License Application

Client Initials: AG

Date: 5/5/23

You are a valued customer of Topknotch Security INC, and we want you to enjoy our guards' services. To ensure that the integrity of our officers is maintained for you and all of our customers, the following Terms & Conditions apply to all services provided by Topknotch Security INC, under all circumstances and without exception.

The purchaser (client) on the front of this contract is 100% responsible for his or her guests.

Topknotch Security INC will strictly enforce State and Federal Laws and will maintain a zero-tolerance compliance policy that no alcoholic beverages can be consumed or used by any person not of legal drinking age. All U.S. law enforcement agencies have absolute power to stop any event for administrative search. If contraband is found, even in negligible quantities without the officers knowledge, they can seize and forfeit the contraband to a local government agency. All law enforcement agencies are aggressively enforcing this policy.

Topknotch Security INC will not be responsible for injuries that may occur due to fighting while the event is ongoing. Topknotch Security INC will do their best to defuse any situation verbally, if Topknotch Security INC feels as if our officers cannot control the situation, we will be forced to contact the local law enforcement.

At the officer's discretion, the Client agrees to be fully liable for any damages / charges that may be incurred.

The Client accepts full responsibility for any and all damage, and for any loss of income due to negligence or carelessness caused by any member of the client's group at any time during the event. The Client authorizes Topknotch Security INC to charge for the expenses regardless of and in addition to any prior agreements or understandings. These charges are necessary due to the high cost of insurance, health insurance, uniforms, and due to the revenue and time lost during the time that the officer cannot work.

Please initial here to acknowledge the charges should any damages occur. AG

- Topknotch Security INC recommends that all and any personal valuables be removed from the vehicle when unattended. We will not be held responsible for any lost, stolen, or damaged articles.

- Topknotch Security INC reserves the right to terminate this or any other contract for noncompliance of the above requests, especially if responsible party does not follow Topknotch Security INC, requests to obey the rules in this contract.

Any deposits (cash, checks or course of payment) will be non-refundable for any reason, if any cancellation occurs from the responsible party's side. If for any reason the local law enforcements shuts the event down for any reasons, payment is non-refundable. The open balance is due immediately the day before the agreed job. The renter authorizes the immediate 30% non-refundable retainer & the final payment, states that she/he is the authorized purchaser for this rental contract, the authorized party for the given payment, responsible and liable for payment of the total amount, per cash or other payments. As with all contracts, the rental contract between the mentioned person as renter (Client) and Topknotch Security INC is made with the information and the terms given to us. I am satisfied with the terms and conditions above and fully understand and agree to everything stated in the contract.

Client Initials: AG Date 5/5/23

All of the given information from the Client is binding and cannot be changed without Topknotch Security INC acceptance. If the contract is cancelled after it is signed, Topknotch Security INC is still authorized to collect the remaining balance in full, if the officers does not go out again on the cancelled date for the same or higher amount. We will reserve the set date upon the approval of the purchaser's preferred payment as per telephone conversation. The responsible party gives authorization to use the payment information over the phone / fax / Internet in combination with a signed contract. It is agreed that it is not necessary to obtain a signed slip, as the reservation is made over the phone / fax / Internet. Proof of identity of the purchaser using said credit card must be supported by the signed contract or in person. At time of event we need the full payment, state identification of the purchaser that authorizes the transaction for the signed contract. If the purchaser cannot provide all of the above items at the time of event, Topknotch Security INC will not start the job, as we have no proof of the legal possession of payment. Therefore the risk of not getting paid will give us the right to cancel. The purchaser is still fully responsible to pay the total amount as he failed to provide the above requirements.

Topknotch Security INC cannot guarantee the availability of overtime. It is of particular importance that the purchaser makes allowances for anticipated delays and adheres to the agreed time schedule. In the event that the purchaser wants to change the time of the itinerary, they may do so, only if Topknotch Security INC can accommodate other clients that booked with Topknotch Security INC prior to or after the said time. The purchaser further agrees to pay additional charges incurred such as overtime and or more officers. The overtime will be billed by hourly rate at \$35.00 per hour, unless negotiated otherwise. If customer fails to cancel at the last minute, the full amount of contracted time will be charged.

The purchaser authorizes Topknotch Security INC to charge any additional charges after they have rendered services to the purchasers' as supplemental charge. If cash payment is selected, the payment is due no later than the close of the next business day in full. Customer agrees to have Topknotch Security INC get an authorization for the above course of payment and amount, for the event stated above.

If any payment due hereunder is unpaid (10) ten days after the due date, hereon Topknotch Security INC will have the right to add and collect late charges with interest at the maximum rate allowed by law. All such sums are due and owing with any other expenses, (filing fees, court cost, and reasonable attorney fees, etc.)

I fully understand and agree to everything stated in the contract and the Terms & Conditions. If, for any reasons, I am not fully satisfied with the services I receive, I have 24 hours after the completion of the job to file a complaint in writing. If Topknotch Security INC, does not receive my written complaint in the above stated timeframe, I agree that there is no valid complaint, and I am fully satisfied with the services I received. Filing a written complaint insures both parties that it is fully understood what the problem was and will help Topknotch Security INC to assist the responsible parties in any kind of resolution to the complaint. The purchaser will be contacted within a week of the complaint to settle the matter. I understand that this is a separate case from the main contract and therefore have no dispute in general against Topknotch Security INC and the payment I authorized.

Since Topknotch Security INC offers high-tech-equipment, sometimes heat and excessive use of all power-operated equipment might be subject to having more breaks for our officers. This will, of course, not interfere with the safety of the party itself and therefore will have no effect on continuing or paying of the contracted event. Topknotch Security INC guarantees that all our officers are constantly trained to keep the highest possible standards and eliminate such failures as much as possible. We have the right to add more officers in case of emergency or the event is getting bigger than contracted. As stated, this will only happen in emergencies, and to upgrade, never downgrade. If the upgrade is needed, Topknotch Security INC gives the customer the right to downsize the event and receive additional charges. Additional charges will occur on the customer's side if an upgrade is made. Topknotch Security INC will notify the responsible party if more officers and hours are needed, as well as how much more the cost will be.

If any of our above guarantees or contracted terms cannot be met due to conditions outside of our control, including weather, accidents, and any other acts of incidents, we will use our best efforts to notify the customer of these conditions and resulting delays or changes.

I am satisfied with the terms and conditions above and fully understand and agree to everything stated in the contract and the Terms & Conditions.

Client Signature Amy Graybehl Date 5/5/23
Topknotch Security Representative Signature Madeline M. Foster Date 5/3/25

ADDITIONAL REMARKS:

- 1 officer roaming & 1 officer checking in guest
- Roaming grounds and making sure lights out at 10 pm
- Making sure no guest leave after 8pm
- Roaming the whole grounds and the animals



SECURITY SERVICES AGREEMENT

AGREEMENT PREPARED FOR: **City of Porterville: Shelter**
July 15, 2023



Good Guard Security, Inc.

21622 Plummer St, Suite 200, Chatsworth, CA 91311

1-800-651-0491 ext 1061

info@goodguardsecurity.com

www.GoodGuardSecurity.com

SERVICE DETAILS

Client Service Address:	29 N Plano St, Porterville, CA 93257
Client Billing Address:	29 N Plano St, Porterville, CA 93257
Service Hours:	7 Day(s) / 07:30 PM - 08:30 AM / 13 Hours / Monday - Sunday
Location Contact & Telephone Number:	Amy Graybehl 559-782-7521
Email:	agraybehl@ci.porterville.ca.us
Rate (U.S. Dollars):	\$28.95 (Per Hour Per Guard)
Holiday Rate	\$43.45 (Per Hour Per Guard)
Service Commencement Date:	07/17/2023 @ 07:30 PM
Payment Terms:	Bi-weekly
Permanent/Temporary:	Permanent 3 Month Minimum (30 Day Cancellation Notice)
Uniform:	Professional Security Uniform
Additional Charges:	N/a
Security Service Description:	2 Professional Unarmed Guard(s) 1 Guard will be intaking clients and the other guard will be patrolling the facility. Note: Providing a visual deterrent to any outside danger. Security officers will make sure there isn't anyone vandalizing the premises, or trying to break into the property. Loss prevention.

This SECURITY SERVICES AGREEMENT ("Agreement") is entered into upon mutual execution hereof by and between GOOD GUARD SECURITY, a California corporation, Private Patrol Operator (PPO) License #120362 (hereinafter, "Company") and **City of Porterville** (hereinafter, "Client"), with respect to the following:

- RATES:** Service Rates are subject to adjustment for any change in any law, causing a change in work hours, wage rates, working conditions or other costs to Company.
- PAYMENT:** Invoices will be submitted either bi-weekly or monthly, upon mutual agreement between Company and Client, and are payable on receipt at the address on the invoice. A late charge of 1 ½ % per month will be added to balances not paid within seven days.
- EMPLOYEES:** (a) Personnel supplied by Company are its employees and not Client's. Company is solely responsible for social security, unemployment and similar taxes applicable to its employees.
(b) Company is a Federal Government Contractor and complies with Executive Order 11246, as amended: Section 503 of the Rehabilitation Act of 1973, as amended: Section 402 of Vietnam era Veterans' Readjustment Assistance Act of 1974 and related regulations. Company's employees will be assigned without regard to race, color, creed, sex, and national origin, handicap conditions that do not impair job performance or veteran status.
(c) Client may reasonably remove any employee assigned provided such removal is not in violation of law. In the event any employee is removed at Client's request, Client agrees to indemnify and hold Company harmless from any claims, demands, liabilities, judgments, losses, suits, damages, fines, penalties, and expenses including reasonable attorney's fees and defense costs (hereinafter collectively "Claim(s)") that may arise there from.
- OVERTIME:** Overtime rates shall apply to work on New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas; work on any additional holidays listed and any extra hours exceeding 8-hours a day or 40-hours per week. Coverage for labor disputes, civil disorders or natural disaster, or special assignment or agreement is not included except as described in the Service Rate Classification. Additional overtime rates shall not apply to situations where an employee of Company already on-duty covers hours for a "called-off" employee and thus works over 8-hours in his/her shift.
- PROPERTY/EQUIPMENT:** All property and equipment furnished by Company for performance of its services under this Agreement, regardless of whether portable or stationary, shall be considered the personal property of Company, and shall remain the personal property of Company after termination of this Agreement. Upon the termination of this Agreement, the Company shall have reasonable access and time to remove its property from Client's property. Client shall not be responsible for any of Company's personal property which is stolen, damaged or missing from the property in the absence of Company's supervision.
- KEYS/ACCESS:** Company shall not be provided a master key (or its equivalent) to the property or any portion thereof, except for such location(s) that are to be exclusively used by Company's guards or other personnel. Notwithstanding anything to the contrary in this Agreement, Company shall not be responsible for any damages including, without limitation, any costs incurred in re-keying or changing locks caused by the loss or theft of such key(s).
- NON-COMPETITION:** Client, its affiliates, agents, and other related persons or entities hereby agree not to hire any Company staff, employees, or personnel for a period of at least one (1) year after such person has terminated his/her employment with Company. Client further agrees not to prepare to engage in competition with Company, solicit,

divert, poach, or encourage any of the Company staff, employees, or personnel to stop working with Company, or to solicit, divert, poach, encourage, or facilitate them to work with Client, any affiliate of Client, or any related person or entity of Client. Client recognizes that Company has a significant investment in the recruitment and training of its employees and guards to be providing services under this Agreement, and that these personnel are a valuable asset to Company. As it is impractical and extremely difficult to fix the actual damages which may result from the loss of such employees and guards, Client agrees that if Client (or its affiliates, agents, and other related persons or entities) is in breach of this section of the Agreement, then Client shall be required to pay to Company for each such employee (or former employee employed by Company) the sum of \$7,500.00. Such fee is expressly agreed to be considered liquidated damages, and not a penalty.

8. **LIABILITY AND INDEMNITIES:** (a) Client agrees that Company is not an insurer and that the amounts payable hereunder are based upon the value of service offered and not the value of Client's interests being protected or the property of Client or others located on Client's premises. Accordingly, Company undertakes no liability to Client and makes no representation, express or implied, that its service will prevent occurrences or their consequences, which result in loss or damage. (b) Client agrees that Company shall not be liable for any claims incurred or asserted by Client, irrespective of origin, to persons or property, whether directly or indirectly caused by performance or nonperformance of obligations imposed by this agreement or by negligent acts or omissions, including those relating to the hiring, training, supervision or retention of personnel, of Company, its agents or employees. (c) The services provided under this Agreement are solely for the benefit of Client and neither this Agreement nor any services rendered hereunder confer any rights on any other party as a third-party beneficiary or otherwise and Client agrees to indemnify and hold Company harmless from and against any claims made by a third party(s), including, but not limited to, injury, death or damage or loss of property, arising from the negligent acts or omissions, including those relating to the hiring, training, supervision or retention of personnel, of Company, its agents or employees. (d) If, at Client's request, Company employees undertake duties or are requested to use equipment or vehicles other than as agreed to in writing by Company, Client shall be solely responsible for and shall indemnify and hold Company harmless from and against any claims arising there from, including, but not limited to, claims arising from the negligent acts or omissions including those relating to the hiring, training, supervision or retention of personnel, of Company, its agents or employees. (e) Client hereby waives any and all rights of subrogation that any insurer of Client may have against Company. (f) Where Company is entitled to indemnification, Company shall have the right to tender defense of the claim to Client.
9. **FORCE MAJEURE:** The obligations of Company hereunder may be suspended during any period where performance is prevented by acts of God, civil or labor disturbances, or events beyond Company's reasonable economic control.
10. **HAZARDOUS OR DEFECTIVE CONDITIONS/MATERIALS:** (a) Client agrees that it will comply with OSHA Hazard Communication Standards and will indemnify and hold Company harmless from all claims, including injuries to Company's employees arising out of a condition existing at Client's premises or Client's violation of any safety or health related law or regulation. (b) Client further agrees to: (1) make available to Company the Material Safety Data Sheet for each hazardous chemical to which Company's employees may be exposed at Client's premises; (2) inform company of (A) precautionary measures that need to be taken to protect Company's employees and (B) Client's hazardous material labeling system.
11. **INSURANCE:** Client agrees to assume all risk of loss or damage to its premises, business and property of others on Client's premises occurring as a result of fire, theft or other casualty and Client agrees that it will maintain insurance to fully protect Client against such loss or damage. Accordingly, Client waives its right of recovery against Company of any such loss or damage, however caused.
12. **TERMINATION OF SERVICES:** Except as otherwise provided in this Agreement, this Agreement may be terminated for non-performance by either party, provided that such party has given the others reasonable time to correct any instances of such non- performance. If either party fails to correct such non-performance, the Agreement may be terminated, provided that such party has given the others at least thirty (30) days advance written notice of such intention. Notwithstanding the foregoing and for all other intentions, termination of services by Client must be preceded by at least thirty (30) days advance written notice of such intention to terminate services. Minimum 3-Month Service Agreement from start date.
13. **ENTIRE AGREEMENT AND INTERPRETATION:** This Agreement constitutes the entire agreement and understanding between the parties, and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect. This Agreement shall be governed under the law of the State of its performance and if any provision shall conflict therewith, such provision shall be interpreted to remove such conflict, so that this Agreement and all its other provisions shall remain in full force and effect.
14. **DEFAULT:** Company may terminate this Agreement immediately and exercise such other rights and remedies as permitted by law, if Client fails to pay any amount when due or if any proceeding is commenced or threatened by or against Client under the Bankruptcy Code or any other Debtor's law, or if Client makes or threatens to make an assignment for the benefit of creditors.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have signed this Agreement as of the date first above written:

By GOOD GUARD SECURITY:

Brady Osorto

(Authorized Representative Signature)

Brady Osorto / Business Development Manager

(Print Name & Title)

By CLIENT:

(Authorized Representative Signature)

(Print Name & Title)

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

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.)

Porterville Army National Guard Armory
Temporary Evacuation Point and Shelter

Daily Census

<u>Date:</u>	<u>Adults:</u>	<u>Youth:</u>	<u>Dogs:</u>
Friday, May 5, 2023	12	0	1
Saturday, May 6, 2023	10	0	0
Sunday, May 7, 2023	10	0	0
Monday, May 8, 2023	15	0	1
Tuesday, May 9, 2023	12	0	0
Wednesday, May 10, 2023	8	0	0
Thursday, May 11, 2023	9	0	0
Friday, May 12, 2023	9	0	0
Saturday, May 13, 2023	7	0	0
Sunday, May 14, 2023	6	0	0
Monday, May 15, 2023	13	0	0
Tuesday, May 16, 2023	11	3	4
Wednesday, May 17, 2023	11	3	4
Thursday, May 18, 2023	16	3	4
Friday, May 19, 2023	11	0	3
Saturday, May 20, 2023	14	0	5
Sunday, May 21, 2023	12	0	4
Monday, May 22, 2023	14	0	3
Tuesday, May 23, 2023	14	5	3
Wednesday, May 24, 2023	16	3	3
Thursday, May 25, 2023	13	1	6
Friday, May 26, 2023	18	4	3
Saturday, May 27, 2023	16	5	5
Sunday, May 28, 2023	16	1	3
Monday, May 29, 2023	18	1	3

Tuesday, May 30, 2023	19	1	6
Wednesday, May 31, 2023	17	1	3
Thursday, June 1, 2023	19	1	7
Friday, June 2, 2023	17	1	7
Saturday, June 3, 2023	16	1	4
Sunday, June 4, 2023	20	1	8
Monday, June 5, 2023	20	1	6
Tuesday, June 6, 2023	22	1	10
Wednesday, June 7, 2023	23	1	9
Thursday, June 8, 2023	22	1	7
Friday, June 9, 2023	22	1	10
Saturday, June 10, 2023	15	1	6
Sunday, June 11, 2023	26	1	9
Monday, June 12, 2023	18	1	7
Tuesday, June 13, 2023	24	1	4
Wednesday, June 14, 2023	21	1	7
Thursday, June 15, 2023	20	1	4
Friday, June 16, 2023	28	1	6
Saturday, June 17, 2023	20	1	7
Sunday, June 18, 2023	24	1	4
Monday, June 19, 2023	21	0	8
Tuesday, June 20, 2023	28	0	6
Wednesday, June 21, 2023	28	0	4
Thursday, June 22, 2023	22	0	4
Friday, June 23, 2023	27	0	4
Saturday, June 24, 2023	26	0	4
Sunday, June 25, 2023	24	0	3
Monday, June 26, 2023	23	0	4
Tuesday, June 27, 2023	30	0	5

Wednesday, June 28, 2023	26	0	6
Thursday, June 29, 2023	27	0	5
Friday, June 30, 2023	25	0	5
Saturday, July 1, 2023	27	0	9
Sunday, July 2, 2023	25	3	3
Monday, July 3, 2023	24	3	3
Tuesday, July 4, 2023	20	3	4
Wednesday, July 5, 2023	28	2	6
Thursday, July 6, 2023	28	2	5
Friday, July 7, 2023	27	2	6
Saturday, July 8, 2023	28	2	5
Sunday, July 9, 2023	36	2	3
Monday, July 10, 2023	28	2	3
Tuesday, July 11, 2023	34	2	4
Wednesday, July 12, 2023	35	2	2
Thursday, July 13, 2023	47	2	7
Friday, July 14, 2023	27	2	0
Saturday, July 15, 2023	24	2	2
Sunday, July 16, 2023	24	2	3
Monday, July 17, 2023	26	2	1
Tuesday, July 18, 2023	26	2	2
Wednesday, July 19, 2023	21	2	1
Thursday, July 20, 2023	21	2	1
Friday, July 21, 2023	22	0	0
Saturday, July 22, 2023	22	0	0
Sunday, July 23, 2023	22	0	0
Monday, July 24, 2023	21	0	0
Tuesday, July 25, 2023	22	0	0
Wednesday, July 26, 2023	20	0	0

Thursday, July 27, 2023	27	0	0
Friday, July 28, 2023	25	0	0
Saturday, July 29, 2023	22	0	0
Sunday, July 30, 2023	22	0	0
Monday, July 31, 2023	24	0	0
Tuesday, August 1, 2023	21	0	0
Wednesday, August 2, 2023	19	0	0
Thursday, August 3, 2023	20	0	0
Friday, August 4, 2023	19	0	0
Saturday, August 5, 2023	26	0	0
Sunday, August 6, 2023	22	0	0
Monday, August 7, 2023	20	0	0
Tuesday, August 8, 2023	25	0	3
Wednesday, August 9, 2023	23	0	3
Thursday, August 10, 2023	20	0	3
Friday, August 11, 2023	23	0	5
Saturday, August 12, 2023	22	0	5
Sunday, August 13, 2023	29	0	6
Monday, August 14, 2023	25	0	5
Tuesday, August 15, 2023	21	0	5
Wednesday, August 16, 2023	23	0	6
Thursday, August 17, 2023	23	0	5
Friday, August 18, 2023	22	0	5
Saturday, August 19, 2023	23	0	5
Sunday, August 20, 2023	21	0	4
Monday, August 21, 2023	25	0	5
Tuesday, August 22, 2023	22	0	5
Wednesday, August 23, 2023	27	0	5
Thursday, August 24, 2023	22	0	5

Friday, August 25, 2023	25	0	5
Saturday, August 26, 2023	23	0	4
Sunday, August 27, 2023	25	0	5
Monday, August 28, 2023	23	1	5
Tuesday, August 29, 2023	24	1	6
Wednesday, August 30, 2023	22	2	6
Thursday, August 31, 2023	18	2	5
Friday, September 1, 2023	17	2	5
Saturday, September 2, 2023	20	2	5
Sunday, September 3, 2023	20	2	5
Monday, September 4, 2023	21	2	5
Tuesday, September 5, 2023	22	2	5
Wednesday, September 6, 2023	15	2	3
Thursday, September 7, 2023	16	2	4
Friday, September 8, 2023	18	2	4
Saturday, September 9, 2023	19	2	4
Sunday, September 10, 2023	20	2	5
Monday, September 11, 2023	20	2	5
Tuesday, September 12, 2023	24	2	5
Wednesday, September 13, 2023	24	2	5
Thursday, September 14, 2023	21	2	5
Friday, September 15, 2023	26	2	5
Saturday, September 16, 2023	28	2	5
Sunday, September 17, 2023	26	2	5
Monday, September 18, 2023	22	2	5
Tuesday, September 19, 2023	24	2	5
Wednesday, September 20, 2023	26	2	5
Thursday, September 21, 2023	30	2	5

Friday, September 22, 2023	23	2	5
Saturday, September 23, 2023	20	2	5
Sunday, September 24, 2023	26	2	5
Monday, September 25, 2023	20	2	4
Tuesday, September 26, 2023	20	2	4
Wednesday, September 27, 2023	24	2	4
Thursday, September 28, 2023	22	2	4
Friday, September 29, 2023	17	2	4
Saturday, September 30, 2023	20	2	4
Sunday, October 1, 2023	23	2	4
Monday, October 2, 2023	20	2	4
Tuesday, October 3, 2023	18	2	4
Wednesday, October 4, 2023	22	2	4
Thursday, October 5, 2023	24	2	7
Friday, October 6, 2023	21	2	5
Saturday, October 7, 2023	18	2	5
Sunday, October 8, 2023	19	2	5
Monday, October 9, 2023	20	2	5
Tuesday, October 10, 2023	19	2	5
Wednesday, October 11, 2023	22	2	5
Thursday, October 12, 2023	27	2	5
Friday, October 13, 2023	21	2	5
Saturday, October 14, 2023	21	2	5
Sunday, October 15, 2023	19	2	5
Monday, October 16, 2023	24	2	5
Tuesday, October 17, 2023	22	2	5
Wednesday, October 18, 2023	22	2	5
Thursday, October 19, 2023	30	2	5
Friday, October 20, 2023	17	2	5

Saturday, October 21, 2023	15	2	5
Sunday, October 22, 2023	22	2	5
Monday, October 23, 2023	22	2	5
Tuesday, October 24, 2023	20	2	5
Wednesday, October 25, 2023	19	2	5
Thursday, October 26, 2023	21	1	5
Friday, October 27, 2023	21	1	3
Saturday, October 28, 2023	21	1	3
Sunday, October 29, 2023	18	1	3
Monday, October 30, 2023	24	1	3
Tuesday, October 31, 2023	20	1	3
Wednesday, November 1, 2023	25	1	3
Thursday, November 2, 2023	24	1	3
Friday, November 3, 2023	22	1	3
Saturday, November 4, 2023	22	1	3
Sunday, November 5, 2023	19	1	3
Monday, November 6, 2023	23	1	3
Tuesday, November 7, 2023	27	1	3
Wednesday, November 8, 2023	22	1	3
Thursday, November 9, 2023	22	1	3
Friday, November 10, 2023	23	1	3
Saturday, November 11, 2023	21	1	3
Sunday, November 12, 2023	24	1	3
Monday, November 13, 2023	27	1	3
Tuesday, November 14, 2023	24	1	3
Wednesday, November 15, 2023	29	1	3
Thursday, November 16, 2023	29	0	3
Friday, November 17, 2023	25	0	3
Saturday, November 18, 2023	29	0	3

Sunday, November 19, 2023	29	0	3
Monday, November 20, 2023	29	0	3
Tuesday, November 21, 2023	29	0	3
Wednesday, November 22, 2023	29	0	3
Thursday, November 23, 2023	21	0	3
Friday, November 24, 2023	29	0	3
Saturday, November 25, 2023	27	0	3
Sunday, November 26, 2023	27	0	3
Monday, November 27, 2023	26	0	3
Tuesday, November 28, 2023	27	0	3
Wednesday, November 29, 2023	29	0	3
Thursday, November 30, 2023	27	0	3
Friday, December 1, 2023	22	0	3
Saturday, December 2, 2023	25	0	3
Sunday, December 3, 2023	25	0	3
Monday, December 4, 2023	20	0	3
Tuesday, December 5, 2023	25	0	3
Wednesday, December 6, 2023	30	0	3
Thursday, December 7, 2023	30	0	3
Friday, December 8, 2023	29	0	3
Saturday, December 9, 2023	25	0	3
Sunday, December 10, 2023	31	0	3
Monday, December 11, 2023	30	0	3
Tuesday, December 12, 2023	32	0	3
Wednesday, December 13, 2023	32	0	3
Thursday, December 14, 2023	35	0	3
Friday, December 15, 2023	30	0	3
Saturday, December 16, 2023	31	0	3
Sunday, December 17, 2023	29	0	3

Monday, December 18, 2023	26	0	3
Tuesday, December 19, 2023	25	1	3
Wednesday, December 20, 2023	31	0	3
Thursday, December 21, 2023	28	0	3
Friday, December 22, 2023	32	0	3
Saturday, December 23, 2023	29	0	3
Sunday, December 24, 2023	30	0	3
Monday, December 25, 2023	28	0	3
Tuesday, December 26, 2023	23	0	3
Wednesday, December 27, 2023	24	0	3
Thursday, December 28, 2023	28	0	3
Friday, December 29, 2023	23	0	3
Saturday, December 30, 2023	25	0	3
Sunday, December 31, 2023	28	0	3
Monday, January 1, 2024	24	0	3
Tuesday, January 2, 2024	24	0	3
Wednesday, January 3, 2024	29	0	3
Thursday, January 4, 2024	21	0	3
Friday, January 5, 2025	22	0	3
Saturday, January 6, 2024	32	0	3
Sunday, January 7, 2024	29	0	3
Monday, January 8, 2024	26	0	3
Tuesday, January 9, 2024	27	0	3
Wednesday, January 10, 2024	34	0	3
Thursday, January 11, 2024	33	0	3
Friday, January 12, 2025	36	0	3
Saturday, January 13, 2024	35	0	3
Sunday, January 14, 2024	34	0	3
Monday, January 15, 2024	39	0	3

Tuesday, January 16, 2024	38	0	4
Wednesday, January 17, 2024	33	0	4
Thursday, January 18, 2024	33	0	4
Friday, January 19, 2025	33	0	4
Saturday, January 20, 2024	36	0	4
Sunday, January 21, 2024	38	0	4
Monday, January 22, 2024	36	1	4
Tuesday, January 23, 2024	34	1	4
Wednesday, January 24, 2024	32	1	4
Thursday, January 25, 2024	38	1	4
Friday, January 26, 2025	35	1	4
Saturday, January 27, 2024	32	1	4
Sunday, January 28, 2024	36	1	4
Monday, January 29, 2024	34	1	4
Tuesday, January 30, 2024	40	1	5
Wednesday, January 31, 2024	36	1	5
Thursday, February 1, 2024	36	1	5
Friday, February 2, 2024	36	1	5
Saturday, February 3, 2024	27	1	5
Sunday, February 4, 2024	33	1	5
Monday, February 5, 2024	29	1	5
Tuesday, February 6, 2024	33	1	5
Wednesday, February 7, 2024	37	1	5
Thursday, February 8, 2024	34	1	5
Friday, February 9, 2024	37	0	5
Saturday, February 10, 2024	38	0	5
Sunday, February 11, 2024	39	0	5
Monday, February 12, 2024	35	0	5
Tuesday, February 13, 2024	38	0	5

Wednesday, February 14, 2024	37	0	5
Thursday, February 15, 2024	35	0	5
Friday, February 16, 2024	38	0	5
Saturday, February 17, 2024	40	0	5
Sunday, February 18, 2024	38	0	5
Monday, February 19, 2024	41	0	5
Tuesday, February 20, 2024	43	0	5
Wednesday, February 21, 2024	36	0	5
Thursday, February 22, 2024	39	0	5
Friday, February 23, 2024	36	0	5
Saturday, February 24, 2024	36	0	5
Sunday, February 25, 2024	38	0	5
Monday, February 26, 2024	37	0	5
Tuesday, February 27, 2024	41	0	5
Wednesday, February 28, 2024	41	0	9
Thursday, February 29, 2024	33	0	9
Friday, March 1, 2024	34	0	9
Saturday, March 2, 2024	33	0	9
Sunday, March 3, 2024	33	0	9
Monday, March 4, 2024	35	0	9
Tuesday, March 5, 2024	38	0	9
Wednesday, March 6, 2024	35	0	9
Thursday, March 7, 2024	36	0	9
Friday, March 8, 2024	37	0	9
Saturday, March 9, 2024	37	0	9
Sunday, March 10, 2024	41	0	9
Monday, March 11, 2024	41	0	9
Tuesday, March 12, 2024	42	0	9
Wednesday, March 13, 2024	40	0	9

Thursday, March 14, 2024	40	0	9
Friday, March 15, 2024	42	0	9
Saturday, March 16, 2024	39	0	9
Sunday, March 17, 2024	39	0	9
Monday, March 18, 2024	40	0	9
Tuesday, March 19, 2024	42	0	9
Wednesday, March 20, 2024	38	0	9
Thursday, March 21, 2024	35	0	9
Friday, March 22, 2024	37	0	9
Saturday, March 23, 2024	42	0	9
Sunday, March 24, 2024	42	0	9
Monday, March 25, 2024	41	0	9
Tuesday, March 26, 2024	41	0	9
Wednesday, March 27, 2024	44	0	9
Thursday, March 28, 2024	40	0	9
Friday, March 29, 2024	45	0	9
Saturday, March 30, 2024	46	0	9
Sunday, March 31, 2024	34	0	9
Monday, April 1, 2024	46	0	9
Tuesday, April 2, 2024	34	0	9
Wednesday, April 3, 2024	38	0	9
Thursday, April 4, 2024	38	0	9
Friday, April 5, 2024	31	0	9
Saturday, April 6, 2024	28	0	9
Sunday, April 7, 2024	33	0	9
Monday, April 8, 2024	38	0	9
Tuesday, April 9, 2024	41	0	9
Wednesday, April 10, 2024	39	0	9
Thursday, April 11, 2024	34	0	9

Friday, April 12, 2024	33	0	9
Saturday, April 13, 2024	38	0	9
Sunday, April 14, 2024	36	0	9
Monday, April 15, 2024	31	0	9
Tuesday, April 16, 2024	34	0	9
Wednesday, April 17, 2024	34	0	9
Thursday, April 18, 2024	33	0	9
Friday, April 19, 2024	29	0	9
Saturday, April 20, 2024	28	0	9
Sunday, April 21, 2024	29	0	9
Monday, April 22, 2024	28	0	9
Tuesday, April 23, 2024	28	0	9
Wednesday, April 24, 2024	28	0	9
Thursday, April 25, 2024	29	0	9
Friday, April 26, 2024	32	0	9
Saturday, April 27, 2024	30	0	9
Sunday, April 28, 2024	34	0	9
Monday, April 29, 2024	29	0	9
Tuesday, April 30, 2024	28	0	8
Wednesday, May 1, 2024	27	0	9
Thursday, May 2, 2024	26	0	9
Friday, May 3, 2024	29	0	9
Saturday, May 4, 2024	29	0	9
Sunday, May 5, 2024	34	0	9
Monday, May 6, 2024	30	0	9
Tuesday, May 7, 2024	30	0	9
Wednesday, May 8, 2024	30	0	9
Thursday, May 9, 2024	35	0	9
Friday, May 10, 2024	32	0	9

Saturday, May 11, 2024	30	0	9
Sunday, May 12, 2024	30	0	9
Monday, May 13, 2024	32	0	9
Tuesday, May 14, 2024	32	0	9
Wednesday, May 15, 2024	32	0	9
Thursday, May 16, 2024	33	0	9
Friday, May 17, 2024	36	0	9
Saturday, May 18, 2024	33	0	9
Sunday, May 19, 2024	38	0	9
Monday, May 20, 2024	34	0	8
Tuesday, May 21, 2024	30	0	9
Wednesday, May 22, 2024	30	0	9
Thursday, May 23, 2024	29	0	7
Friday, May 24, 2024	34	0	8
Saturday, May 25, 2024	35	0	9
Sunday, May 26, 2024	38	1	9
Monday, May 27, 2024	36	0	9
Tuesday, May 28, 2024	35	0	8
Wednesday, May 29, 2024	32	0	7
Thursday, May 30, 2024	31	0	7
Friday, May 31, 2024	29	0	8
Saturday, June 1, 2024	30	0	9
Sunday, June 2, 2024	34	0	10
Monday, June 3, 2024	33	0	9
Tuesday, June 4, 2024	27	0	8
Wednesday, June 5, 2024	32	0	9
Thursday, June 6, 2024	31	0	9
Friday, June 7, 2024	30	0	8
Saturday, June 8, 2024	33	0	9

Sunday, June 9, 2024	36	0	9
Monday, June 10, 2024	35	0	9
Tuesday, June 11, 2024	34	0	8
Wednesday, June 12, 2024	25	0	8
Thursday, June 13, 2024	30	0	10
Friday, June 14, 2024	39	0	10
Saturday, June 15, 2024	34	0	8
Sunday, June 16, 2024	34	0	8
Monday, June 17, 2024	32	0	9
Tuesday, June 18, 2024	34	0	10
Wednesday, June 19, 2024	33	0	9
Thursday, June 20, 2024	33	0	11
Friday, June 21, 2024	30	0	9
Saturday, June 22, 2024	27	0	8
Sunday, June 23, 2024	33	0	10
Monday, June 24, 2024	16	0	7
Tuesday, June 25, 2024	20	0	7
Wednesday, June 26, 2024	30	0	9
Thursday, June 27, 2024	30	0	9
Friday, June 28, 2024	33	0	10
Saturday, June 29, 2024	34	0	10
Sunday, June 30, 2024	34	0	10
Monday, July 1, 2024	30	0	10
Tuesday, July 2, 2024	35	0	11
Wednesday, July 3, 2024	27	0	9
Thursday, July 4, 2024	27	0	9
Friday, July 5, 2024	30	0	9
Saturday, July 6, 2024	29	0	9
Sunday, July 7, 2024	32	0	10

Monday, July 8, 2024	36	0	11
Tuesday, July 9, 2024	34	0	10
Wednesday, July 10, 2024	35	0	9
Thursday, July 11, 2024	35	0	9
Friday, July 12, 2024	26	0	8
Saturday, July 13, 2024	31	0	9
Sunday, July 14, 2024	35	0	10
Monday, July 15, 2024	36	0	11
Tuesday, July 16, 2024	33	0	10
Wednesday, July 17, 2024	29	0	9
Thursday, July 18, 2024	19	0	7
Friday, July 19, 2024	20	0	7
Saturday, July 20, 2024	22	0	8
Sunday, July 21, 2024	22	0	8
Monday, July 22, 2024	24	0	8
Tuesday, July 23, 2024	26	0	8
Wednesday, July 24, 2024	23	0	7
Thursday, July 25, 2024	24	0	8
Friday, July 26, 2024	22	0	7
Saturday, July 27, 2024	22	0	7
Sunday, July 28, 2024	23	0	7
Monday, July 29, 2024	23	0	7
Tuesday, July 30, 2024	21	0	7
Wednesday, July 31, 2024	21	0	7
Thursday, August 1, 2024	20	0	7
Friday, August 2, 2024	22	0	7
Saturday, August 3, 2024	18	0	7
Sunday, August 4, 2024	21	0	7
Monday, August 5, 2024	20	0	7

Tuesday, August 6, 2024	22	0	5
Wednesday, August 7, 2024	25	0	6
Thursday, August 8, 2024	25	0	8
Friday, August 9, 2024	20	0	4
Saturday, August 10, 2024	16	0	4
Sunday, August 11, 2024	23	0	5
Monday, August 12, 2024	31	0	7
Tuesday, August 13, 2024	23	0	5
Wednesday, August 14, 2024	24	0	4
Thursday, August 15, 2024	20	0	3
Friday, August 16, 2024	18	0	3
Saturday, August 17, 2024	23	0	4
Sunday, August 18, 2024	23	0	3
Monday, August 19, 2024	21	0	4
Tuesday, August 20, 2024	24	0	3
Wednesday, August 21, 2024	23	0	3
Thursday, August 22, 2024	24	0	3
Friday, August 23, 2024	29	0	3
Saturday, August 24, 2024	18	0	2
Sunday, August 25, 2024	30	0	3
Monday, August 26, 2024	16	0	2
Tuesday, August 27, 2024	21	0	3
Wednesday, August 28, 2024	23	0	2
Thursday, August 29, 2024	24	0	3
Friday, August 30, 2024	23	0	3
Saturday, August 31, 2024	27	0	2
Sunday, September 1, 2024	27	0	3
Monday, September 2, 2024	27	0	2
Tuesday, September 3, 2024	21	0	3

Wednesday, September 4, 2024	22	0	3
Thursday, September 5, 2024	27	0	3
Friday, September 6, 2024	33	0	4
Saturday, September 7, 2024	37	0	4
Sunday, September 8, 2024	28	0	3
Monday, September 9, 2024	32	0	4
Tuesday, September 10, 2024	33	0	3
Wednesday, September 11, 2024	22	0	3
Thursday, September 12, 2024	27	0	3
Friday, September 13, 2024	37	0	4
Saturday, September 14, 2024	33	0	4
Sunday, September 15, 2024	38	0	4
Monday, September 16, 2024	33	0	4
Tuesday, September 17, 2024	34	0	4
Wednesday, September 18, 2024	30	0	3
Thursday, September 19, 2024	33	0	4
Friday, September 20, 2024	20	0	2
Saturday, September 21, 2024	21	0	2
Sunday, September 22, 2024	22	0	3
Monday, September 23, 2024	35	0	4
Tuesday, September 24, 2024	33	0	4
Wednesday, September 25, 2024	34	0	3
Thursday, September 26, 2024	30	0	3
Friday, September 27, 2024	27	0	3
Saturday, September 28, 2024	28	0	3
Sunday, September 29, 2024	29	0	3
Monday, September 30, 2024	33	0	3
Tuesday, October 1, 2024	31	0	3
Wednesday, October 2, 2024	40	0	4

Thursday, October 3, 2024	31	0	3
Friday, October 4, 2024	31	0	3
Saturday, October 5, 2024	30	0	3
Sunday, October 6, 2024	27	0	3
Monday, October 7, 2024	25	0	2
Tuesday, October 8, 2024	28	0	2
Wednesday, October 9, 2024	26	0	2
Thursday, October 10, 2024	30	0	2
Friday, October 11, 20024	30	0	2
Saturday, October 12, 2024	32	0	3
Sunday, October 13, 2024	27	0	2
Monday, October 14, 2024	27	0	2
Tuesday, October 15, 2024	20	3	2
Wednesday, October 16, 2024	29	0	2
Thursday, October 17, 2024	26	0	2
Friday, October 18, 20204	28	0	2
Saturday, October 19, 2024	27	0	2
Sunday, October 20, 2024	27	0	2
Monday, October 21, 2024	28	0	2
Tuesday, October 22, 2024	28	0	2
Wednesday, October 23, 2024	23	0	2
Thursday, October 24, 2024	29	0	2
Friday, October 25, 20204	31	0	2
Saturday, October 26, 2024	30	0	2
Sunday, October 27, 2024	23	0	2
Monday, October 28, 2024	26	0	2
Tuesday, October 29, 2024	27	0	2
Wednesday, October 30, 2024	27	0	2
Thursday, October 31, 2024	24	0	2

Friday, November 1, 20204	30	0	3
Saturday, November 2, 2024	24	0	2
Sunday, November 3, 2024	34	0	3
Monday, November 4, 2024	30	0	2
Tuesday, November 5, 2024	30	0	2
Wednesday, November 6, 2024	32	0	2
Thursday, November 7, 2024	34	0	3
Friday, November 8, 20204	30	0	2
Saturday, November 9, 2024	32	0	3
Sunday, November 10, 2024	36	0	3
Monday, November 11, 2024	42	0	3
Tuesday, November 12, 2024	48	0	3



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Second Reading - Ordinance No. 1908, Amending Series 200 of the Porterville Development Ordinance

SOURCE: City Attorney

COMMENT: Ordinance No. 1908, an Ordinance of the City Council of the City of Porterville Amending Series 200, Section 201.02 Porterville Development Ordinance to accommodate the expansion of existing development by allowing off-site parking for existing public, institutional, and medical uses in residential zone districts, subject to a conditional use permit, was given first reading on November 5, 2024, and has been printed.

RECOMMENDATION: That the City Council give Second Reading to Ordinance No. 1908, waive further reading, and adopt said Ordinance.

ATTACHMENTS: 1. Draft Ordinance

Appropriated/Funded:

Review By:

Department Director:
Yuliana Andrade, Administrative Services Director

Final Approver: Patrice Hildreth, City Manager

ORDINANCE NO. 1908

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING SERIES 200, SECTION 201.02 OF THE PORTERVILLE DEVELOPMENT ORDINANCE REGARDING THE RESIDENTIAL ZONE DISTRICTS

WHEREAS: At a regular meeting on November 5, 2024 the City Council held a public hearing to consider amendment to the Porterville Development Ordinance; and

WHEREAS: The purpose of the proposed amendment is to accommodate the expansion of existing development by allowing off-site parking for existing public, institutional, and medical uses; and

WHEREAS: Pursuant to State and local environmental regulations, the proposed modifications serve to provide an avenue for expansions of existing facilities, for the above identified uses. The proposed ordinance is an implementation measure of the policies, goals, and objectives of the Porterville General 2030 Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that, since the amendment would not result in any physical change, it can be shown with certainty that there is no possibility that the proposed text amendment could have a significant effect on the environment, and that further any implementation of the provisions of the amended text would be subject to site-specific review for potential environmental effects.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Porterville as follows:

SECTION 1: Table 201.02, Land Use Regulations – Residential Districts, of Section 201.02 of Series 200 of Chapter 21 of the Porterville Municipal Code is hereby amended as follows:

TABLE 201.02: LAND USE REGULATIONS—RESIDENTIAL DISTRICTS						
Use Classification	RS-1	RS-2	RM-1	RM-2	RM-3	Additional Regulations
Residential Uses						
Single Family Dwelling	See sub-classifications below					
Attached	-	P	P	P	P	
Detached	P	P	P	P	P	
Multi-Family Residential	-	-	P	P	P	Section 201.04(b)
Family Day Care Home	See sub-classifications below					
Small	P	P	P	P	P	
Large	P	P	P	P	P	Section 301.07 Family Day Care Home, Large
Group Residential	P(1)	P(1)	P(1)	P	P	

TABLE 201.02: LAND USE REGULATIONS—RESIDENTIAL DISTRICTS						
<i>Use Classification</i>	<i>RS-1</i>	<i>RS-2</i>	<i>RM-1</i>	<i>RM-2</i>	<i>RM-3</i>	<i>Additional Regulations</i>
Mobile Home Parks	-	-	C(2)	C(2)	C(2)	Section 301.10 Manufactured Homes; Section 301.11 Mobile Home Parks
Residential Care Facilities, Limited	P	P	P	P	P	
Public and Semi-Public Uses						
Clubs and Lodges	-	-	-	C	C	Section 301.02 Alcoholic Beverage Sales
Community Centers	-	-	C	C	C	
Cultural Institutions	-	-	-	C	C	
Elderly and Long-term Care	-	-	-	C	P	
Park and Recreation Facilities, Public	P	P	P	P	P	
Religious Facilities	C	C	C	C	C	
Residential Care Facilities, General	-	-	C	C	C	Section 301.15 Residential Care Facilities, General
Schools, Public or Private	P	P	P	P	P	
<i>Parking, Public or Private</i>	<i>C(4)</i>	<i>C(4)</i>	<i>C(4)</i>	<i>C(4)</i>	<i>C(4)</i>	<i>Section 304.05 Location of Required Parking and Section 304.10 Parking Area Design and Improvement Standards</i>
Social Service Facilities	-	-	-	-	C	Section 301.19 Social Service Facilities
Commercial Uses						
Eating, Drinking, and Smoking Establishments	See sub-classifications below					
<i>Coffee Shops/Cafes</i>	-	-	-	-	M(3)	Section 300.08 Outdoor Seating
<i>Restaurants</i>	-	-	-	-	C(3)	Section 300.08 Outdoor Seating; Section 301.02 Alcoholic Beverage Sales
Bed and Breakfasts	-	-	-	C	C	
Transportation, Communication, and Utilities Uses						
Utilities, Minor	P	P	P	P	P	
Agricultural and Extractive Uses						
Crop Cultivation, Commercial	M	M	M	M	M	Section 301.06 Crop Cultivation

TABLE 201.02: LAND USE REGULATIONS—RESIDENTIAL DISTRICTS						
Use Classification	RS-1	RS-2	RM-1	RM-2	RM-3	Additional Regulations
Crop Cultivation, Non-Commercial	P	P	P	P	P	
Other Applicable Types						
Accessory Uses and Structures	P	P	P	P	P	Section 301.01 Accessory Uses and Structures
Animal Keeping	P	P	P	P	P	Section 301.04 Animal Keeping
Home Occupations	P	P	P	P	P	Section 301.09 Home Occupations
Second Dwelling Unit	P	P	P	P	P	Section 301.16 Second Dwelling Units
Nonconforming Use	Chapter 307 Nonconforming Uses, Structures, and Lots					
Temporary Use	Section 301.21 Temporary Uses					
Specific Limitations:						
1. Limited to no more than two rooms in a dwelling rented to not more than a total of four persons and meals are not provided to more than four boarders. 2. Limited to sites with a minimum gross site area of 10 acres. 3. Limited to a restaurant or café/coffee shop accessory to a mobile home court or a private club or lodge when such use has no direct access off a public street and accommodates only residents, members, or their guests. 4. Permitted in conjunction with an existing public, institutional, or medical use. No existing residential structure or use shall be removed or modified to accommodate the parking use.						

This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

PASSED, APPROVED, AND ADOPTED this 19th day of November, 2024.

Martha A. Flores, Mayor

ATTEST:
Patrice Hildreth, City Clerk

By: _____
Fernando Gabriel-Moraga,
Acting Chief Deputy City Clerk



CITY COUNCIL AGENDA – NOVEMBER 19, 2024

SUBJECT: Consideration of Establishing a Standing Cannabis Committee

SOURCE: City Manager's Office

COMMENT: On March 7, 2017, the City Council conducted a study session concerning the then recently passed Proposition 64, the Adult Use of Marijuana Act. The study session was primarily focused on the portions of the new state law that provided for local control. At that meeting, the Council took action to establish an ad hoc committee to work with staff to research options and to make recommendations to the City Council. As established, the committee was comprised of two Council Members: Council Members Cameron Hamilton and Monte Reyes.

Since that time, the ad hoc committee has worked with staff to review and make recommendations to the City Council to establish a local cannabis taxing structure, land use and development agreements, and cannabis permitting procedures and regulations. The ad hoc committee is currently comprised of Council Members Raymond Beltran and Donald Weyhrauch.

Ad hoc committees by definition serve "for this situation" in that they are temporary, time-specific, and or task-specific bodies. In contrast, a standing committee serves on a more long-term basis with more consistent mandates. As the City's commercial cannabis activities are now established, and the three dispensaries are now operational, it would now be prudent to abolish the ad hoc committee.

If the Council sees value in continuing to have a committee to review cannabis-related items, the Council could establish a standing cannabis committee. The standing committee could mirror the ad hoc committee in its composition, or it could include other members in addition to two members of the City Council. Options include adding one or more public members, and/or city staff. Because the committee would be a standing committee, it would be a Brown Act body. Should the Council wish to proceed, staff will bring a draft resolution forward at the next Council Meeting for the Council's consideration.

RECOMMENDATION: That the City Council:

1. Abolish the Ad Hoc Cannabis Committee; and
2. Provide direction to staff concerning the establishment of a standing Cannabis Committee.

ATTACHMENTS:

Appropriated/Funded:

Review By:

Department Director:
Patrice Hildreth, City Manager

Final Approver: Patrice Hildreth, City Manager