



AGENDA

Regular City Council Meeting

and Successor Agency to the
Former Redevelopment Agency

Tuesday, September 21, 2021 – 6:00 pm.

Council Chambers

746 8th Street, Wasco, CA 93280

www.cityofwasco.org

SPECIAL NOTICE REGARDING REMOTE PUBLIC PARTICIPATION DUE TO COVID-19*

City Hall is now open to the public for business. The City Council Chamber will be open to the public for City Council meetings; If you are not fully vaccinated, you must wear a mask.

The City Council Meeting is now live-streamed on the city's website:

<https://www.cityofwasco.org/306/city-council-meeting-videos>, subject to technical limitations.

Public comment regarding matters on the agenda may be made in person or via email. If you wish to comment on a specific agenda item, submit your comment via email to cityclerk@cityofwasco.org no later than 4:00 p.m. September 21, 2021. Please clearly indicate which agenda item number your comment pertains to. If you wish to make a general public comment not related to a specific agenda item, submit your comment via email to cityclerk@cityofwasco.org no later than 4:00 p.m. September 21, 2021.

Every effort will be made to read your comment into the record; however, they are limited to two (2) minutes. If a comment is received after the specific time mentioned above but before the meeting is adjourned, the comment will still be included as a part of the record of the meeting but will not be read into the record.

REGULAR MEETING – 6:00 pm

- 1) **CALL TO ORDER:** Mayor
- 2) **ROLL CALL:** Mayor Reyna, Mayor Pro Tem Pallares, Council Members: Cortez, Garcia, Martinez
- 3) **FLAG SALUTE:** Mayor
- 4) **INVOCATION:**
- 5) **PRESENTATIONS:**
 - a. Recognition for the St. Johns Church Knights of Columbus
 - b. Recognition for Eulogio Arreola
 - c. Recognition for White Cap

6) PUBLIC COMMENTS:

This portion of the meeting is reserved for persons desiring to address the Council and including the Council acting as the Governing Board for the Successor Agency on any matter not on this agenda and over which the Council and Successor Agency have jurisdiction. Speakers are limited to two (2) minutes. A maximum of Thirty (30) minutes will be allowed for any one subject. Please state your name for the record before making your presentation.

BROWN ACT REQUIREMENTS: The Brown Act does not allow action or Discussion on items, not on the agenda (subject to narrow exceptions). This will limit a Councilmember's response to questions and requests made during this comment period.

7) SUCCESSOR AGENCY BUSINESS: None

8) WASCO PUBLIC FINANCE AUTHORITY BUSINESS: None

CITY COUNCIL BUSINESS:

9) CONSENT CALENDAR:

The Consent Calendar consists of items that, in staff's opinion, are routine and non-controversial. These items are approved in one motion unless a Council Member or member of the public requests removal of a particular item.

- a. Receive and file departments payments totaling \$254,436.58
- b. Receive and File the Investment Report for the month ended August 31, 2021.
- c. Adopt and Waive the Second Reading of an Ordinance, of the City Council of the City of Wasco Acting in its Capacity as the Legislative Body of City of Wasco Community Facilities District No. 2020-01 Authorizing the Levy of a Special Tax within that District.
- d. Adopt a Resolution Approving the Final Map for Phase 1 of Tract 7373 Accepting for Public Use all Dedications for the Purpose for which they are offered, Authorizing the City Manager and the City Clerk to sign the Subdivision Agreement, and Authorizing the City Clerk to Endorse the Map.
- e. Adopt a Resolution authorizing the Deferral of Certain Impact Fees for 11 duplexes and one single family residence approved in Site Plan Review 19-501, Delagado Villas, (APN 488-060-06), as provided for under Title 13 of the Wasco Municipal Code and Government Code Section 66007.

10) PUBLIC HEARINGS: None

11) DEFERRED BUSINESS:

- a. Kern County Fire Department Report and Discussion regarding illegal fireworks. (Hurlbert)
- b. Adopt a Resolution Authorizing the City Manager to sign and enter into an Agreement with the County of Kern to obtain Community Development Block Grant funding for the 16th Street Rehabilitation Project. (Villa)

12) NEW BUSINESS:

- a. Adopt a Resolution approving an Employment Agreement with Maria Lara as Assistant City Manager in the amount of \$108,680.00 annually and authorize the City Manager to execute the agreement. (Hurlbert)
- b. Report and Adopt a Resolution Approving an Agreement by and between the City of Wasco and the County of Kern to Provide Fire Protection Services within the City of Wasco. (Hurlbert)
- c. Update on City of Wasco Downtown Streetscape Re-design Efforts- Information Only. (Cobb)
- d. Discussion and direction to staff regarding City of Wasco's position on proposed reform of the Bradley Burns local sales tax distribution model. (Hurlbert)
- e. Report regarding the procurement and deployment of body worn cameras, and Adopt a Resolution Approving Amendment No. 1 to the June 15, 2021 Agreement by and between the City of Wasco and the County of Kern to Provide Fire Protection Services within the City of Wasco. (Hurlbert)

13) REPORTS FROM COMMISSIONS AND COMMITTEES:

- a. Kern Economic Development Corporation (Cortez)
- b. Kern Council of Government (Garcia)
- c. Wasco Task Force (Martinez & Reyna)

14) REPORTS FROM KC FIRE AND SHERIFF:

15) REPORTS FROM CITY MANAGER:

16) REPORTS FROM CITY COUNCIL:

17) CLOSED SESSION:

- a. Approve Closed Session Minutes for September 7, 2021.
- b. **CONFERENCE WITH LABOR NEGOTIATORS 54957.6**
Agency designated representatives: City Manager, HR Manager
Employee Organization: SEIU Local 521

18) CLOSED SESSION ACTION: None

19) ADJOURNMENT:

This is to certify that this agenda was posted at Wasco City Hall on September 17, 2021, on/or before 6:00 p.m. The agenda is also available on the City website at www.cityofwasco.org

Monica Flores, Deputy City Clerk

All agenda item supporting documentation is available for public review in the city website www.cityofwasco.org and the office of the City Clerk of the City of Wasco, 746 8th Street, Wasco, CA 93280 during regular business hours, 7:30 am – 5:00 pm Monday through Thursday and 8–5 pm Friday (closed alternate Friday's), following the posting of the agenda. Any supporting documentation related to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location and available at the meeting. **Please remember to turn off all cell phones, pagers, or electronic devices during Council meetings.**

The City of Wasco does not discriminate on the basis of disability in the access to, provision of, or employment in its programs and activities pursuant to 29 United States Code Section 12132 and California Civil Code Section 54. Information regarding the rights provided under the Americans with Disabilities Act (ADA) may be obtained from the City Clerk's Office.

If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (661) 758-7215 to make reasonable arrangements to ensure accessibility to this meeting. Telephone (661) 758-7215 Requests for assistance should be made at least two (2) days in advance whenever possible.

Bill Pay

City Council: September 21, 2021

WARRANTS	AMOUNTS
G083021	4,309.21
G090121	19,696.34
G090221	47,107.81
G090321	4,250.00
G090421	896.53
A090821	65,780.06
G090621	20,213.79
G090821	92,182.84
Grand Total	254,436.58

Verified By:
Finance Director

Isarel Perez-Hernandez
Digitally signed by: Isarel Perez-Hernandez
DN: CN = Isarel Perez-Hernandez
email = isaperez@cityofwasco.org C =
US O = City of Wasco
Date: 2021.09.15 11:43:06 -08'00'

A	B	C	D	E	F	G	
WARRANT	VENDOR NAME	VENDOR No.	INVOICE No.	CHECK No.	DESCRIPTION	AMOUNTS	
1	G083021	THE BAKERSFIELD CALIFORNIAN	206	072189223	21734	ADS:RE: PALM AVE,ROOF SHERIFF-CH/SAFETY PREDESTRIAN	3,364.97
2	G083021	SELF-HELP ENTERPRISES	3636	JUNE 2021	21733	CV1- SUBSISTENCE PAYMENT REIMB 1	944.24
3	G083021 Total					4,309.21	
4	G090121	BC LABORATORIES, INC.	63	B423971	21738	WW SAMPLE TEST 7/15/21 GW QUARTERLY MONITORING	1,000.00
5	G090121	COUNTRY AUTO & TRUCK, INC.	3008	728786	21743	MATERIAL #GENERAL: TIE DOWN STRAPS & LIGHTS	153.25
6	G090121	SELF-HELP ENTERPRISES	3636	JUNE 2021.	21760	CV1 - SUBSISTENCE PAYMENT REIMB 2	1,592.31
7	G090121	BRIGHT HOUSE NETWORK, LLC	68	064477502081421	21740	INTERNET SRVCS 08/13/21-09/12/21 FOR 764 E ST	118.52
8	G090121	AFLAC	108	912608	21735	AFLAC PREMIUM AUG 21	822.20
9	G090121	UNIVAR USA INC	111	49357617	21766	CHLORINE-WTR DISINFECTION WELL#10 IRIS & GRIFFITH	563.51
10	G090121	UNIVAR USA INC	111	49357618	21766	CHLORINE-WTR DISINFECTION WELL#14 747 G ST	699.17
11	G090121	UNIVAR USA INC	111	49357619	21766	CHLORINE-WTR DISINFECTION WELL#8 POSO DRIVE	834.82
12	G090121	UNIVAR USA INC	111	49357620	21766	CHLORINE-WTR DISINFECTION WELL#7 4TH & POPLAR	793.08
13	G090121	PETERSON AUTO SUPPLY	152	349919	21758	DISPOSAL #23: COOLANT HOSE	16.88
14	G090121	ZEE MEDICAL SERVICE CO. #34	238	34-219582	21767	WW FIRST AID KIT REFILLS	38.14
15	G090121	ZEE MEDICAL SERVICE CO. #34	238	34-219584	21767	ANIMAL CONTROL FIRST AID REFILL	13.04
16	G090121	THE GAS COMPANY	246	08207136329 AUG 21	21765	MULTIPLE ADDRESSES 07/13/21-08/11/21	134.18
17	G090121	SULLY & SONS HYDRAULICS INC	366	0149149-IN	21763	DISPOSAL #23,#15, #22: SERVICE 4 RAMS & SEALS	904.26
18	G090121	JAYNE REITHOFER	1391	6061-0125010180	21748	RFND CREDIT 6061-0125010180	163.66
19	G090121	SOUTHERN CALIFORNIA GAS COMPANY	1438	07/01/21-08/01/21	21762	CNG FUEL BILL 07/01/21-08/01/21	3,097.39
20	G090121	INFO SEND, INC.	4244	196508	21747	INSERTS:(WAC) COVID ASSISTANT PROGRAM & STATEMENTS	1,125.73
21	G090121	M & S SECURITY SERVICES	4445	69849	21751	REPLACE PANIC SWITCH-FINANCE & PLANNING	131.81
22	G090121	BRIDGEPORT TRUCK MANUFACTURING, INC	4493	48689-00	21739	DISPOSAL #15: PACKER RAM	1,550.26
23	G090121	LACAL EQUIPMENT INC.	4673	0350235-IN	21749	DISPOSAL #17: CURTAIN SET KIT HOPPER & BRACKETS	1,975.84
24	G090121	CORE & MAIN LP	4704	P376889	21742	4 INCH BOLT COUPLERS USED FOR MAIN BREAK REPAIRS	700.59
25	G090121	CORE & MAIN LP	4704	P336451	21742	6 INCH BOLT COUPLERS STOCK REP	573.73
26	G090121	NEW YORK LIFE INSURANCE COMPANY	4733	S10763000 AUG 21	21754	INS. PREMIUM AUG 21	330.00
27	G090121	SILVER & WRIGHT LLP	4804	28115	21761	NUISANCE ABATEMENT JUL 21	798.55
28	G090121	AMAZON CAPITAL SERVICES, INC	4968	1PTL-D4T4-T7VD	21736	SCAN TOOL FULL SYSTEM FOR ALL VEHICLES	790.23
29	G090121	SWEET 7TH ST.	5405	16451-0007009471	21764	RFND CREDIT 0007009471 CID#16451	10.23
30	G090121	SWEET 7TH ST.	5405	16451-0007009470	21764	RFND CREDIT 0007009470 CID#16451	51.57
31	G090121	MARGARET S. ALBRIGHT	5406	14930-0120004330	21752	UB 0120004330 433 BECKES ST	160.30
32	G090121	BASIL ZUNIGA	5407	1123-0130009220	21737	RFND CREDIT CID#1123 ACCT#0130009220	48.74
33	G090121	ESMERALDA MORALES	5408	15574-0235018470	21745	15574-0235018470 1847 GRIFFITH AVE	80.50
34	G090121	HECTOR GUTIERREZ	5409	7578-0378018900	21746	RFND CREDIT CID#7578 ACC#0378018900	1.75

	A	B	C	D	E	F	G
	WARRANT	VENDOR NAME	VENDOR No.	INVOICE No.	CHECK No.	DESCRIPTION	AMOUNTS
35	G090121	PEDRO ESCATEL	5410	7246-0378018070	21756	RFND CREDIT 7246-0378018070	83.03
36	G090121	ELENA MARTINEZ	5411	6168-0416015010	21744	RFND CREDIT 6168-0416015010	51.90
37	G090121	ORVILLE & MARGARET REAVES	5412	457-0005018440	21755	RFND CREDIT 457-0005018440	19.63
38	G090121	PEDRO OROZCO	5413	3161-0430011220.	21757	RFND CREDIT 3161-0430011220	17.10
39	G090121	PEDRO OROZCO	5413	3161-0430011220	21757	RFND CREDIT 3161-0430011220	51.90
40	G090121	MARY ELLEN REXIUS	5414	3-0001009090	21753	RFND CREDIT 909 1ST ST.	22.32
41	G090121	MARY ELLEN REXIUS	5414	3-0001009090.	21753	RFND CREDIT 909 1ST ST.	51.90
42	G090121	CLINT COMPTON	5415	8557-0379018120	21741	RFND CREDIT CID#8557 ACC#0379018120	7.98
43	G090121	LILIAN MARTINEZ	5418	13548-0346012090	21750	RFND CREDIT CID#13548 ACC#0346012090	20.44
44	G090121	SALDANA, GERANO E.	5445	GRADE:D2 REIMB	21759	G.SALDANA CERTIFICATION RENEWAL GRADE D2	80.00
45	G090121	LAVERNE & SON ELECTRICAL A/C & HEATING	5417	71993	21805	BUSINESS LICENSE REFUND-OVER PAYMENT	11.80
46	G090121	PACO TIRE & WHEELS	5420	72011	21806	BUSINESS LICENSE REFUND-OVER PAYMENT	0.10
47	G090121	WASCO CIRCLE K-CHEVRON	5421	72012	21807	BUSINESS LICENSE REFUND-OVER PAYMENT	4.00
48	G090121 Total						19,696.34
49	G090221	PG & E COMPANY	85	51997041895 08/20/21	21768	UB 07/16/21 - 08/16/21 MULTIPLE LOCATIONS	39,570.35
50	G090221	PG & E COMPANY	85	67155644395 08/25/21	21768	UB 07/23/21-08/23/21 5410 7TH ST	7,537.46
51	G090221 Total						47,107.81
52	G090321	RICHARDS, WATSON, GERSHON A PROFFESIONAL CORP	3343	231980	21769	LEGAL SERVICES APRIL 2021	4,250.00
53	G090321 Total						4,250.00
54	G090421	PAVEMENT RECYCLING SYSTEMS	5416	71992	21790	BUSINESS LICENSE REFUND-OVER PAYMENT	20.00
55	G090421	RUFF MANAGEMENT INC (MCDONALD'S)	5419	72010	21794	BUSINESS LICENSE REFUND-OVER PAYMENT	6.95
56	G090421	MEDFORD CONSTRUCTION, INC	5422	72013	21787	BUSINESS LICENSE REFUND-OVER PAYMENT	37.00
57	G090421	SAN JOAQUIN FENCE	5423	72014	21795	BUSINESS LICENSE REFUND-OVER PAYMENT	1.00
58	G090421	BETTADINI CIGARETTE STORE	5424	72015	21771	BUSINESS LICENSE REFUND-OVER PAYMENT	1.00
59	G090421	WASCO REALTY (MARGRET SMITH)	5425	72016	21803	BUSINESS LICENSE REFUND-OVER PAYMENT	10.00
60	G090421	MARFI'S (MARTHA TRUJILLO)	5426	72017	21785	BUSINESS LICENSE REFUND-OVER PAYMENT	30.00
61	G090421	MCCLARD MASONRY CONSTRUCTION	5427	72018	21786	BUSINESS LICENSE REFUND-OVER PAYMENT	1.90
62	G090421	BEUTLER CORPORATION	5428	72019	21772	BUSINESS LICENSE REFUND-OVER PAYMENT	60.00
63	G090421	ENERGETIC PAINTING & DRYWALL INC	5429	72020	21779	BUSINESS LICENSE REFUND-OVER PAYMENT	1.00
64	G090421	LOOP ELECTRIC INC	5430	72021	21784	BUSINESS LICENSE REFUND-OVER PAYMENT	9.00
65	G090421	WESTERN DOOR	5431	72022	21804	BUSINESS LICENSE REFUND-OVER PAYMENT	10.00
66	G090421	IRONWOOD COMMUNICATIONS INC	5432	72024	21783	BUSINESS LICENSE REFUND-OVER PAYMENT	5.00
67	G090421	CLARK & SON TRUCKING	5433	72026	21775	BUSINESS LICENSE REFUND-OVER PAYMENT	28.00
68	G090421	CVC CONSTRUCTION CORP	5434	72038	21776	BUSINESS LICENSE REFUND-OVER PAYMENT	235.00
69	G090421	WASCO MINI MARKET	5435	72039	21802	BUSINESS LICENSE REFUND-OVER PAYMENT	20.00
70	G090421	ROMERO LAWN SERVICE	5436	72047	21792	BUSINESS LICENSE REFUND-OVER PAYMENT	6.00
71	G090421	PLANET DANCE	5437	72048	21791	BUSINESS LICENSE REFUND-OVER PAYMENT	0.30
72	G090421	CASCADE POOLS & SPAS	5438	72049	21774	BUSINESS LICENSE REFUND-OVER PAYMENT	30.00
73	G090421	SHEAR DESIGN/TERRY NGUYEN	5439	72050	21796	BUSINESS LICENSE REFUND-OVER PAYMENT	35.40
74	G090421	VALUE ROOFING	5440	72051	21801	BUSINESS LICENSE REFUND-OVER PAYMENT	0.08
75	G090421	SUNNYGEM LLC	5441	72052	21798	BUSINESS LICENSE REFUND-OVER PAYMENT	65.00
76	G090421	TRANSFORM SR HOME IMPROVE PRODUCTS, LLC	5442	72053	21800	BUSINESS LICENSE REFUND-OVER PAYMENT	13.50
77	G090421	SUPER CHINA BUFFET	5443	72054	21799	BUSINESS LICENSE REFUND-OVER PAYMENT	1.06
78	G090421	GARY STEWARD	5447	1295-0175007320	21780	1295- 0175007320 732 CYPRESS AV	7.73
79	G090421	STEVEN YURSIK	5448	13612-022502201	21797	13612-0225022010 2201 GARDEN ST.	21.71

	A	B	C	D	E	F	G
	WARRANT	VENDOR NAME	VENDOR No.	INVOICE No.	CHECK No.	DESCRIPTION	AMOUNTS
80	G090421	HOGG DRILLING SPECIALTY CONSTRUCTION, IN	5453	72173	21781	BUSINESS LICENSE REFUND-OVER PAYMENT	97.00
81	G090421	DELICIAS SINALOENCE ICE CREAM SHOP	5455	72175	21777	BUSINESS LICENSE REFUND-OVER PAYMENT	6.00
82	G090421	BRAHMA GROUP INC.	5456	72176	21773	BUSINESS LICENSE REFUND-OVER PAYMENT	6.00
83	G090421	ROSE POINT DIALYSIS	5457	72178	21793	BUSINESS LICENSE REFUND-OVER PAYMENT	23.90
84	G090421	MEYERS CONSTRUCTORS, INC.	5459	72180	21788	BUSINESS LICENSE REFUND-OVER PAYMENT	55.00
85	G090421	DS SERVICES OF AMERICA	5464	72188	21778	BUSINESS LICENSE REFUND-OVER PAYMENT	10.00
86	G090421	MINUTE KEY INC	5466	72190	21789	BUSINESS LICENSE REFUND-OVER PAYMENT	2.00
87	G090421	INTEGRATED ENERGY SYSTEMS	5467	72191	21782	BUSINESS LICENSE REFUND-OVER PAYMENT	20.00
88	G090421	ALCAL SPECIALTY	5468	72192	21770	BUSINESS LICENSE REFUND-OVER PAYMENT	20.00
89	G090421 Total						896.53
90	A090821	ADMINISTRATIVE SOLUTIONS-FRESNO	2208	08/24/21	5094	MEDICAL CHECK RUN 08/24/21	6,085.14
91	A090821	ADMINISTRATIVE SOLUTIONS-FRESNO	2208	08/31/21	5094	MEDICAL CHECK RUN 08/31/21	2,297.67
92	A090821	BLUE SHIELD OF CALIFORNIA	3591	212280056562	5095	INS. PREMIUM SEPT 21	50,361.09
93	A090821	METROPOLITAN LIFE INSURANCE COMPANY	4932	TS059540570001 SEP21	5096	INS. PREMIUM SEPT 2021	7,036.16
94	A090821 Total						65,780.06
95	G090621	AMAZON CAPITAL SERVICES, INC	4968	1HPR-KRH7-6LND	21808	RUSTIC WATER TOWER FOR BIRI'S FAREWELL	148.27
96	G090621	AMAZON CAPITAL SERVICES, INC	4968	1Y3R-FQDW-7JTY	21808	CREDIT RETURN FROM INV:1HPR-KFR7-6LND	(86.58)
97	G090621	JEFFRIES BROS., INC	140	92149CT	21810	FUEL FOR JUL 21	12,469.60
98	G090621	BSK & ASSOCIATES, INC.	1052	0095772	21809	7TH STREET WATERLINE REPAIR PROJECT	617.00
99	G090621	JOHN KULAR CONSULTING	3734	1099	21811	JUN2021:REVIEW REVISED APPLICATN7COMMENTTS/CERTIS	570.00
100	G090621	JOHN KULAR CONSULTING	3734	1100	21811	JUN2021:SEWER REVIEW/MAPS,REVISE MD DATA	4,610.50
101	G090621	THE SHAFTER PRESS/ WASCO TRIBUNE	4787	2312	21812	ADS:RE:REROOF SHERIFF/CITY HALL	195.00
102	G090621	THE SHAFTER PRESS/ WASCO TRIBUNE	4787	2320	21812	ADS:RE:PEDESTRIAN SAFETY IMPROVEMENTS	255.00
103	G090621	SWAGIT PRODUCTIONS, INC	5178	18388	21813	VIDEO STREAMING SERVICES JULY 2021	1,435.00
104	G090621 Total						20,213.79
105	G090821	ATT - PAYMENT CENTER		000016941460	21820	PHONE SRVCS 07/24/21-08/23/21	27.60
106	G090821	ATT - PAYMENT CENTER		000016941461	21820	PHONE SRVCS 07/24/21-08/23/21	44.91
107	G090821	ATT - PAYMENT CENTER		000016941462	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
108	G090821	ATT - PAYMENT CENTER		000016941463	21820	PHONE SRVCS 07/24/21-08/23/21	321.52
109	G090821	ATT - PAYMENT CENTER		000016941464	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
110	G090821	ATT - PAYMENT CENTER		000016941465	21820	PHONE SRVCS 07/24/21-08/23/21	66.54
111	G090821	ATT - PAYMENT CENTER		000016941466	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
112	G090821	ATT - PAYMENT CENTER		000016941467	21820	PHONE SRVCS 07/24/21-08/23/21	44.95
113	G090821	ATT - PAYMENT CENTER		000016941468	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
114	G090821	ATT - PAYMENT CENTER		000016941469	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
115	G090821	ATT - PAYMENT CENTER		000016941470	21820	PHONE SRVCS 07/24/21-08/23/21	969.96
116	G090821	ATT - PAYMENT CENTER		000016941471	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
117	G090821	ATT - PAYMENT CENTER		000016941472	21820	PHONE SRVCS 07/24/21-08/23/21	27.60
118	G090821	ATT - PAYMENT CENTER		000016941473	21820	PHONE SRVCS 07/24/21-08/23/21	43.24
119	G090821	ATT - PAYMENT CENTER		000016941474	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
120	G090821	ATT - PAYMENT CENTER		000016941475	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
121	G090821	ATT - PAYMENT CENTER		000016941476	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
122	G090821	ATT - PAYMENT CENTER		000016941477	21820	PHONE SRVCS 07/24/21-08/23/21	23.30
123	G090821	ATT - PAYMENT CENTER		000016941478	21820	PHONE SRVCS 07/24/21-08/23/21	66.54
124	G090821	ATT - PAYMENT CENTER		000016943002	21820	PHONE SRVCS 07/24/21-08/23/21	82.97

	A	B	C	D	E	F	G
	WARRANT	VENDOR NAME	VENDOR No.	INVOICE No.	CHECK No.	DESCRIPTION	AMOUNTS
125	G090821	BC LABORATORIES, INC.	63	B426988	21822	WWT SAMPLE TEST 08/10/21 INFLUENT MONITORING	153.00
126	G090821	BC LABORATORIES, INC.	63	B426691	21822	WWT SAMPLE TEST 08/18/21 INFLUENT MONITORING	70.00
127	G090821	BC LABORATORIES, INC.	63	B426427	21822	WWT SAMPLE TEST 08/03/21 INFLUENT MONITORING	70.00
128	G090821	BC LABORATORIES, INC.	63	B426629	21822	WWT SAMPLE TEST 08/13/21 INFLUENT MONITORING	70.00
129	G090821	BC LABORATORIES, INC.	63	B427038	21822	WWT SAMPLE TEST 08/20/21 INFLUENT MONITORING	70.00
130	G090821	BC LABORATORIES, INC.	63	B426289	21822	WWT SAMPLE TEST 08/05/21 INFLUENT MONITORING	70.00
131	G090821	FED EX	123	7-474-57721	21826	FEDEX 08/19/21	63.04
132	G090821	FED EX	123	7-490-07960	21826	FEDEX 09/02/21	23.90
133	G090821	FED EX	123	7-481-97559	21826	FEDEX 08/26/21	82.12
134	G090821	KERN PLUMBING & BACK FLOW SERVICES INC	173	10850	21833	REPLACE BROKEN BACKFLOW	676.56
135	G090821	PG & E COMPANY	85	46754368564 08/27/21	21836	UB NE COR CENTRAL AVE & MARGALO ST 08/27/21	160.47
136	G090821	THE BAKERSFIELD CALIFORNIAN	206	082189224	21844	ADS:RE:CITY PROJECTS MANAGER & WWT OPERATOR TRAINING	553.80
137	G090821	THE BAKERSFIELD CALIFORNIAN	206	082189223	21844	ADS:RE:CENTRAL AVE NEIGHBORHOOD PARK PROJECT	740.86
138	G090821	UNIVAR USA INC	111	49382792	21845	CHLORINE-WTR DISINFECTION WELL#11 11TH & OAK	573.94
139	G090821	SULLY & SONS HYDRAULICS INC	366	0149307-IN	21843	HOPPER RAM SERVICE	1,273.71
140	G090821	AMAZON CAPITAL SERVICES, INC	4968	137D-YPQN-74NX	21818	LIGHT LED REPLACEMENT LED LIGHT BULB-STREET	236.16
141	G090821	AMAZON CAPITAL SERVICES, INC	4968	ICWV-K9HG-9X71	21818	LOCK BOLT FOR PUBLIC WORKS	9.73
142	G090821	AMAZON CAPITAL SERVICES, INC	4968	1X3K-6M9X-7M74	21818	WASTE WATER INTERNET CABLE COVERS	43.28
143	G090821	AMAZON CAPITAL SERVICES, INC	4968	1FP6-6VY6-F1KD	21818	3 500GB INTERNAL SSD GEN3X4-WWT,DR,ANIMAL CONTROL	194.82
144	G090821	AMAZON CAPITAL SERVICES, INC	4968	IR9X-1TDK-GYKD	21818	MARLO GLASER RETIREMENT GIFT	32.42
145	G090821	RICHARDS, WATSON, GERSHON A PROFESSIONAL CORP	3343	233308	21840	LEGAL SRVCS FOR JUL 2021	4,675.00
146	G090821	JEFFRIES BROS., INC	140	93008	21830	DISPOSABLE GENERAL,GREASE PUMP ASSEMBLY	731.88
147	G090821	JEFFRIES BROS., INC	140	93309	21830	DISPOSABLE GENERAL,IMPERIAL RED-TAC 2	398.79
148	G090821	JEFFRIES BROS., INC	140	93898CT	21830	FUEL FOR JUL 21	11,496.99
149	G090821	JOHN KULAR CONSULTING	3734	1108	21831	JUL 21: SEND LETTER TO CERTIS	47.50
150	G090821	JOHN KULAR CONSULTING	3734	1109	21831	JUL 2021 SEWER:CHECK DATA,MAPS,MODEL,REPORTS,REVIEW	13,630.25
151	G090821	THE SHAFTER PRESS/ WASCO TRIBUNE	4787	2350	21842	ADS:RE:CENTRAL AVE PARK DESIGN	168.00
152	G090821	KERN COUNTY WASTE MANAGEMENT DEPT.	19	SEPT 21	21832	LANDFILL FOR SEPT 21	13,518.99
153	G090821	CLARK PEST CONTROL	117	28898136	21824	AUG 2021 PEST CONTROL SRVC @5410 7TH ST	51.00
154	G090821	ACCOUNTEMPs	268	58224720	21815	TEMP M.SOLORIO WE 08/06/21	878.34
155	G090821	ACCOUNTEMPs	268	58307455	21815	TEMP M.SOLORIO WE 08/13/21	712.86
156	G090821	ACCOUNTEMPs	268	58307894	21815	TEMP M.SOLORIO WE 08/20/21	1,207.36
157	G090821	AFFINITY TRUCK CENTER	405	F013226948:01	21816	DISPOSAL#13, REPAIR IGNITION SWITCH, KEY SET	837.83
158	G090821	LAWSON PRODUCTS INC	792	9308739339	21834	ELECTRICAL CONNECTORS	138.00
159	G090821	FERGUSON ENTERPRISES INC	1008	1653165	21827	6" Tee & Gate valves to replace 9th street valve	3,263.27
160	G090821	DEPARTMENT OF JUSTICE	1668	526266	21825	FINGERPRINT FOR JULY 21	64.00
161	G090821	RAYMOND'S TROPHY & AWARDS, INC.	2095	79584	21838	CHERRY WOOD PLAQUE-ASCENSION RIOS 17 YRS SRVC	63.76
162	G090821	ATLAS COPCO COMPRESSORS LLC	2391	1121082912	21819	CNG O-RING 2 SETS	186.60
163	G090821	SCHROETER, THOMAS F.	2732	AUG 2021	21841	LEGAL SRVCS FOR AUG 2021	3,841.25
164	G090821	ALEXANDER'S CONTRACT SERVICES, INC.	3828	202108190590	21817	5404 METER READING DATES 08/13-/08/19/21	5,425.72
165	G090821	MAC GENERAL ENGINEERING, INC.	3915	3-212937-2	21835	2021 SB1 STREETS OVERLAY VARIOUS LOCATIONS	20,306.37
166	G090821	READYREFRESH BY NESTLE	4027	01H0033487406	21839	07/27/21-08/26/21 DRINKING WTR @5409 7TH ST	22.30
167	G090821	BANK UP CORPORATION	4259	4717	21821	LOCKBOX PROCESSING AUG 21	688.56
168	G090821	ACC BUSINESS	4766	212275800	21814	FIBER NETWORK SRVCS AUG 21	812.44
169	G090821	GRANADOS, MARIO	4828	10845	21829	2 QT CHINESE ELM - THIN & SHAPE	1,400.00

	A	B	C	D	E	F	G
	WARRANT	VENDOR NAME	VENDOR No.	INVOICE No.	CHECK No.	DESCRIPTION	AMOUNTS
170	G090821	PHOENIX GROUP INFORMATION SYSTEMS	4913	072021239	21837	CITATIONS FEES & SRVCS JUL 21	346.27
171	G090821	BISHOP, BIRIDIANA	4957	LOAN #3 CALPERS RFND	21823	REFUND FOR LOAN #3 CALPERS	69.91
172	G090821	TRADICIONES MARKETS, INC	5259	572 AUG 21	21828	AUG 202:572 UB PAYMENTS TRANSACTIONS	102.96
173	G090821 Total						92,182.84
174						GRAND TOTAL	254,436.58



STAFF REPORT CITY OF WASCO

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager
Isarel Perez-Hernandez, Finance Director

DATE: September 21, 2021

SUBJECT: Receive and File the Investment Report for the month ended August 31, 2021.

Recommendation:

Staff recommends the City Council receive and file the Investment Report for the month ended August 31, 2021.

Background:

This report is prepared and presented to the City Manager and City Council pursuant to the City's Investment Policy requirements and the California Government Code. The City's investment policy requires the Treasurer or Chief Fiscal Officer to render monthly investment reports to the City Manager and the City Council and requires certain information about the City's investments be presented in the report and that the report contains statements that:

- 1) The City is in compliance with its investment policy; and
- 2) The City is able to meet its expenditure requirements for the following six (6) months or provide an explanation of why sufficient funds will or may not be available.

The City's investment strategy continues to prioritize its investment opportunities on the following; in order of importance:

- 1) Safety;
- 2) Liquidity; and
- 3) Yield

This strategy is consistent with the Government Code and stresses keeping the citizens' funds safe and available for operations rather than attempting to maximize returns by making riskier investments.

The Finance Department has prepared the Investment Report for the month ended August 31, 2021. This report meets the latest requirements of the City's Investment Policy as presented to the City Council on June 16, 2020, as well as Government Code Section 53646.

Discussion:

The market value of the City's total cash and Investments on August 31, 2021, was \$49,746,239 compared to \$50,088,280 on July 31, 2021. This is a \$342,041 decrease from the previous month (\$334,547 decrease on the cost basis).

The \$341,692 decrease in cash on hand from July to August was primarily driven by the cashed check totaling \$986,550.74 for the first quarter Sheriff's Contract and the deposit of the sales tax and measure X tax totaling \$503,240.

As of August 31, 2021, the City has \$32.8 million (65.95%) of its Cash and Investment Portfolio held in the State of California Local Agency Investment Fund ("LAIF"), which earned 0.33 % during the quarter (ended June 30, 2021). This earnings rate exceeded the short-term benchmark. Other cash pools held a combined \$6.1 million (12.43%) of the City's Cash and Investment Portfolio. The City also has \$3.1 million (6.26 % of its Portfolio) held by UnionBanc Investment Services ("UBIS") and invested, pursuant to City instructions, in Certificates of Deposit and Governmental Securities with a Money Market account being used to maximize returns on otherwise idle cash.

The metrics used in the attached report are based on Securities issued by the United States Government. The short-term benchmark of 0.05 % is the average earned by a 3-month Treasury Bill during the month ended August 31, 2021, and the long and medium-term benchmark of 0.32 % is the average earnings of 2-year and 3-year treasury notes during that time frame. Lastly, the one-year U.S Treasury benchmark for the month ended August 31, 2021, was 0.07%.

All the information presented in this report is consistent with the disclosures included in the City's Audited Financial Statements previously presented to the City Council.

Fiscal Impact:

There is no fiscal impact on this action

Attachments:

1. Investment Report for the month ended August 31, 2021.



Investment Report
Tuesday, August 31, 2021

	Average Earnings Rate this Month	Metrics (3)	Cost	Market Value(1)	Days	% of Portfolio	WAM (2)
Investments							
Local Agency Investment Fund (LAIF) - Beginning	Available Quarterly	0.05%	32,647,806	32,808,198			
Local Agency Investment Fund (LAIF) - Deposit Wells Fargo			-	-			
Local Agency Investment Fund (LAIF) - Total			32,647,806	32,808,198	7	65.95 %	0.01
Other Cash Pools:							
CSJVRMA Investment Pool	1.22%	0.05%	1,262,308	1,292,993	7	2.60 %	0.00
Cal Trust Short Term Money Market Fund	0.17%	0.05%	1,590,549	1,602,130	1	3.22 %	0.04
Cal Trust Medium Term Money Market Fund	0.30%	0.32%	3,225,416	3,289,150	3	6.61 %	0.00
Investments held in trust by UnionBanc Investment Services, Inc. (see Details on next page)							
Certificates of Deposit	2.43%	0.32%	2,500,000	2,553,253	2,861	5.13 %	0.04
Money Market Funds (August 31, 2021)	0.01%	0.05%	559,551	559,551	1	1.13 %	0.00
Investments current month (August 31, 2021)			41,785,629	42,105,275			0.04
Investments previous month (July 31, 2021)			41,778,484	42,105,624			
Less New Cash Investment			-	-			
Net Investment Increase(Decrease) (August 31, 2021)			7,145	(349)			
Cash on Hand (August 31, 2021)							
Cash Transfer In from LAIF			7,640,963.98	7,640,964	1	18.15 %	0.00
			-	-			
			7,640,964	7,640,964			
Cash on Hand previous month (July 31, 2021)			7,982,656	7,982,656	1		-
Total Deposits and Cash on Hand - Increase(Decrease)			(341,692)	(341,692)			
Total Cash and Investments (August 31, 2021)			49,426,593	49,746,239			
Total Cash and Investments previous month (July 31, 2021)			49,761,140	50,088,280			

(i) *The City's Portfolio of Investments comply with the City's Investment Policy.*

(ii) *According to Government Code Section 53646(b)(3) this report shall include a statement denoting the City's ability to meet its expenditure requirement for the next six months. The City has sufficient available funds on hand to meet its estimated expenditures for the next six months but is also relying on cash inflows to supplement its available funds.*

(1) Sources: State of CA PMIA, National Financial Services, LLC and published Sources

(2) Weighted Average Maturity

(3) Metrics from public sources

- Long and Medium Term Portfolio: Average US Treasury Note 2 and 3 year rate
- Short Term Portfolio: 13 Week Treasury Bill Rate
- One-year U.S Treasury Benchmark .07%

(*) August include true-up adjustments from previous periods.

Certificates of Deposit and Government Securities Held in trust by Unionbanc Investment Services
August 31, 2021

Investment	Tranche if applicable	CUSIP	Rate	Maturity	Cost	Market Value ⁽¹⁾	Days	% of Portfolio	WAM ⁽²⁾
ALLY BANK MIDVALE UTAH		02007GEY5	3.000 %	9/13/2021	250,000	250,265	13	0.51 %	0.00
SALLIE MAE BK SLT LAKE CITY UT		795450W35	3.000 %	9/13/2021	250,000	250,265	13	0.51 %	0.00
CROSSFIRST BK LEAWOOD KS		2276ABQ7	1.850 %	9/22/2021	250,000	250,273	22	0.51 %	0.00
STEARNS BK NA ST CLOUD MN		857894UM9	1.950 %	9/29/2021	250,000	250,380	29	0.51 %	0.00
FIRST PREMIER BK SIOUX FALLS		33610RRG0	1.950 %	10/5/2021	250,000	250,460	35	0.51 %	0.00
INSBANK NASHVILLE TENN		45776NCU8	3.050 %	9/21/2022	250,000	257,635	386	0.51 %	0.01
AMERICAN EXPRESS CENTRN		02587D2Q0	2.500 %	10/5/2022	250,000	256,813	400	0.51 %	0.01
AMERICAN EXP FED SVGS BK		02587CHK9	2.500 %	12/12/2022	250,000	257,223	468	0.51 %	0.01
COMENTITY CAP BK UTAH		20033AF43	3.300 %	9/14/2023	250,000	264,920	744	0.51 %	0.01
CITIBANK NATIONAL ASSOCIATION		17312QT33	3.300 %	9/21/2023	250,000	265,020	751	0.51 %	0.01
TOTAL CERTIFICATES OF DEPOSIT					2,500,000	2,553,253	2,861	5.13 %	0.04
MONEY MARKET FUNDS									
FIDELITY TREASURY MMKT CAPITAL RESERVES		FSRXX	0.010 %	9/1/2021	559,551	559,551	1	1.13 %	0.00
Total Held by Unionbanc Investment Services					3,059,551	3,112,803	2,862	6.26 %	0.04

(1) Sources: National Bank Financial Services, LLC

(2) Weighted Average Maturity



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager
Keri Cobb, Community Development Director

DATE: September 21, 2021

SUBJECT: Adopt and Waive the Second Reading of an Ordinance of the City Council of the City of Wasco Acting in its Capacity as the Legislative Body of the City of Wasco Community Facilities District No. 2020-01 Authorizing the Levy of a Special Tax within that District.

Recommendation:

Staff recommends The City Council to adopt and waive the second reading of an Ordinance of the City Council of the City of the City of Wasco Acting in its Capacity as the Legislative Body of the City of Wasco Community Facilities District No. 2020-01 Authorizing the Levy of a Special Tax within that District.

Background:

On September 7, 2021, the City Council approved the following actions:

- i. Adopt A Resolution of Formation of the City Council of the City of Wasco to Establish City of Wasco Community Facilities District No. 2020-01, to Make Environmental Findings and Determinations with Respect Thereto Pursuant to the California Environmental Quality Act, to Establish an Appropriations Limit, Therefore, to Authorize Levy of a Special Tax Therein, and to Submit the Establishment of an Appropriations Limit and the Levy of a Special Tax to the Qualified Electors Thereof;
- ii. Adopt A Resolution of the City Council of the City of Wasco Calling a Special Election within City of Wasco Community Facilities District No. 2020-01;
- iii. Conduct the Special Election and Canvass Results;
- iv. Adopt Resolution No. 2021 – 3668, A Resolution of the City Council of the City of Wasco Declaring the Results of a Special Election in City of Wasco Community Facilities District No. 2020-01 and Directing the Recording of a Notice of Special Tax Lien; and

- v. Introduction and Waive the First Reading of an Ordinance No. 2021-715, of the City Council of the City of Wasco Acting in its Capacity as the Legislative Body of City of Wasco Community Facilities District No. 2020-01 Authorizing the Levy of a Special Tax within that District.

Discussion:

As Council may recall, these actions were undertaken in order to form Community Facilities District No. 2020-01 (the "CFD"), which would encompass the areas described in Exhibit "A." The current property owner filed a Petition and Waiver requesting the City to establish Community Facilities District No. 2020-01.

On July 20, 2021, the City Council adopted Resolution No. 2021-3649 (the "Resolution of Intention"), declaring the Council's intention to establish the CFD and to authorize the levy of a special tax in accordance with the Rate and Method of Apportionment of Special Tax attached as Exhibit B to the Resolution of Intention (the "Rate and Method"). The Resolution of Intention was the initial step for forming the CFD pursuant to the procedures prescribed by the Act, which include holding a public hearing and submitting the formation of the proposed CFD to the landowner at a special election to be conducted following the conclusion of the public hearing. The Resolution of Intention set September 7, 2021, as the date of a public hearing.

The services to be provided in CFD 2020-01 include the following:

1. Police protection services.
2. Fire protection and suppression services, and ambulance and paramedic services.
3. Maintenance and lighting of parks, parkways, streets, roads, and open space.
4. Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems.
5. Maintenance, including replacement, and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City or by another local agency pursuant to an agreement entered into under Government Code Section 53316.2.

The services will include the estimated and reasonable costs of providing the services including, without limitation: (i) the costs of contracting for services, (ii) the salaries and benefits of City staff, if the City directly provides services, (iii) the expense related to equipment, apparatus, and supplies related to these services and authorized by the Act, and (iv) a proportionate share of City overhead costs associated with providing such services within the CFD.

Services in a CFD are financed through the annual levy of special taxes against the taxable properties in the CFD for as long as necessary to pay the costs and incidental expense of services. The Act does not require that the special tax be apportioned in any particular manner. Therefore, apportionment is left to the discretion of the City Council and may be based on a reasonable formula.

The proposed maximum special tax rate in the Rate and Method is \$1,060.96 per parcel. This maximum rate will increase by the lesser of the CPI or 5% per year indefinitely starting with Fiscal Year 2018/19.

As required, the City Clerk recorded the Notice of Special Tax Lien with the Kern County Recorder's Office. In order to complete the formation of CFD 2020-01, the City Council must adopt Ordinance No. 2021-715.

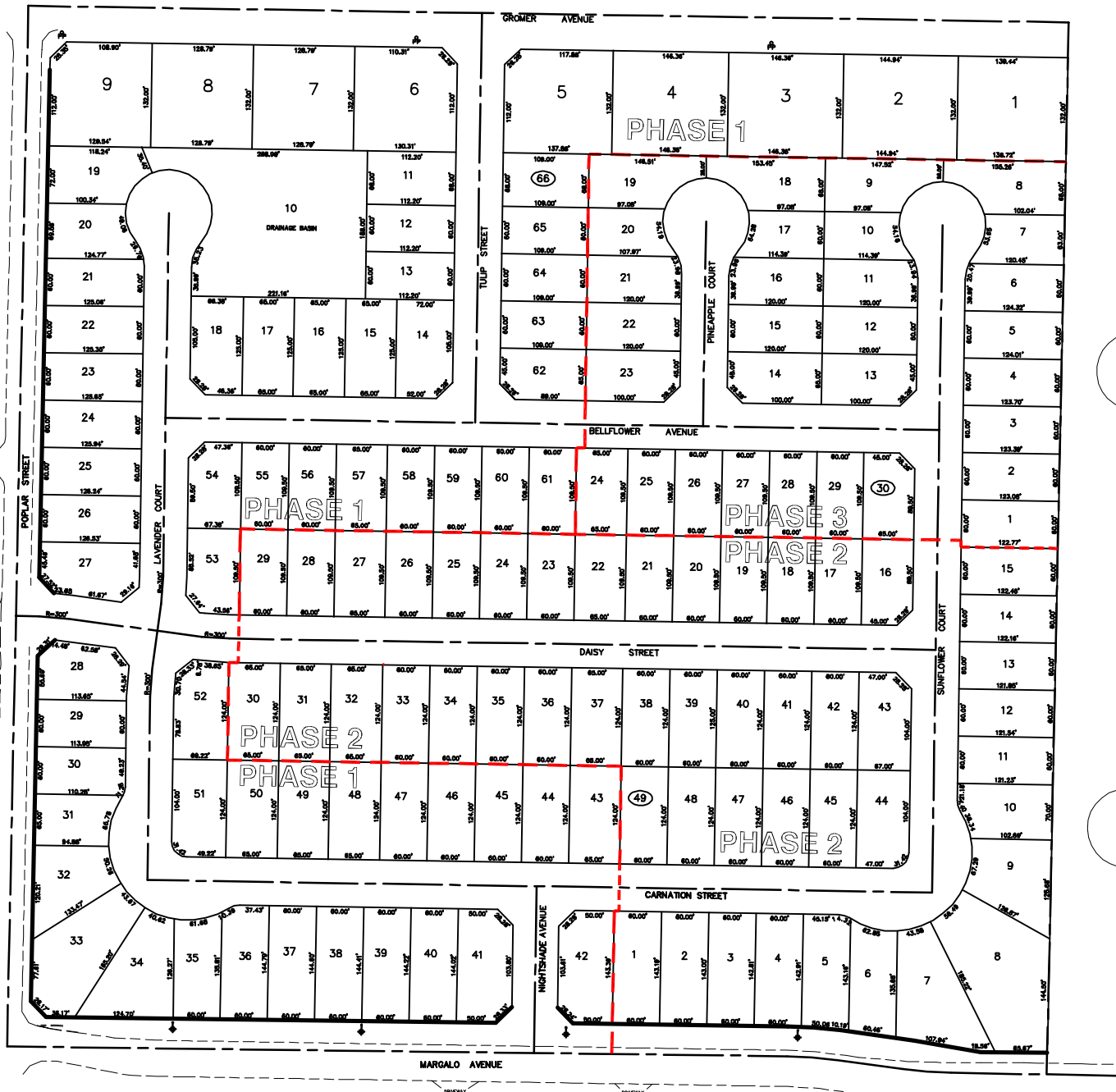
Fiscal Impact:

The proposed CFD will provide the funding mechanism for services through the levy of an annual special tax commencing with Fiscal Year 2022/2023. The individual property owners within the CFD will be responsible for the annual payments of special taxes levied within the CFD.

The Developer is responsible to pay for all costs of forming the CFD. The City's cost to administer the CFD annually will be reimbursed through the special taxes levied in the CFD.

Attachments:

1. Exhibit A – Map of CFD 2020-01
2. Ordinance No. 2020 - 715



TRACT NO. 7373

PHASING PLAN

DATE: 7-27-2020

17 of 188

SCALE: 1" = 200'

ORDINANCE NO. 2021 - 715

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WASCO ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF WASCO COMMUNITY FACILITIES DISTRICT NO. 2020-01 AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THAT DISTRICT

RECITALS:

WHEREAS, the City Council of the City of Wasco (the "City Council"), has previously adopted a resolution entitled "A Resolution of Intention of the City Council of the City of Wasco to Establish City of Wasco Community Facilities District No. 2020-01 and to Authorize the Levy of A Special Tax within City of Wasco Community Facilities District No. 2020-01" (the "Resolution of Intention to Establish District") stating its intention to conduct proceedings to form City of Wasco Community Facilities District No. 2020-01 (the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the California Government Code (the "Act") to finance certain public services (the "Services") to serve the area of land hereinafter described; and

WHEREAS, the Resolution of Intention to Establish District set September 7, 2021 as the date of a public hearing on the establishment of the District, extent of the District, the furnishing of Services to serve the District, and the proposed rate and method of apportionment of the special tax; and

WHEREAS, a notice of the public hearing was published in accordance with the Act; and

WHEREAS, prior to the date of the public hearing there was filed with the City Council a report containing a description of the Services necessary to adequately meet the needs of the District and an estimate of the cost of financing such Services as required by Section 53321.5 of the Act; and

WHEREAS, at the public hearing all persons desiring to be heard on all matters pertaining to the establishment of the District, the extent of the District, the furnishing of Services to serve the District, and the proposed rate and method of apportionment of the special tax were heard and a full and fair hearing was held; and

WHEREAS, at the public hearing evidence was presented to the City Council on the matters before it and the City Council at the conclusion of the hearing is fully advised as to all matters relating to the formation of the District, and the levy of the special tax therein; and

WHEREAS, subsequent to the public hearing, the City Council adopted a resolution entitled "A Resolution of Formation of the City Council of the City of Wasco to Establish City of Wasco Community Facilities District No. 2020-01, to Make Environmental Findings and Determinations With Respect Thereto Pursuant to the California Environmental Quality Act, to Establish an Appropriations Limit Therefor, to Authorize the Levy of a Special Tax Therein, and to Submit the Establishment of an Appropriations Limit and the Levy of a Special Tax to the Qualified Electors Thereof" (the "Resolution of Formation") which established the District and authorized the levy of a special tax, subject to approval by qualified electors, within the District; and

WHEREAS, subsequent to the public hearing, the City Council also adopted a resolution entitled "A Resolution of the City Council of the City of Wasco Calling a Special Election within City of Wasco Community Facilities District No. 2020-01" (the "Resolution Calling a Special Election") which called a special election of the qualified electors of the District; and

WHEREAS, pursuant to the terms of the Resolution Calling a Special Election, an election was held within the District at which the qualified electors of the District approved the levy of a special tax within the District and the establishment of an appropriations limit for the District; and

WHEREAS, on September 7, 2021, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Wasco Declaring the Results of a Special Election in City of Wasco Community Facilities District No. 2020-01 and Directing the Recording of a Notice of Special Tax Lien" (the "Resolution Declaring Results of Election") which certified the results of the September 7, 2021 election conducted by the City Clerk, which results showed that more than two-thirds of the votes cast in the District were in favor of the proposition to levy the special tax and establish an appropriations limit for the District.

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

1. Recitals. The above recitals are all true and correct.
2. Authorization of Levy of Special Tax. By passage of this Ordinance, the City Council authorizes the levy of a special tax within the District at the rates and in accordance with the Rate and Method of Apportionment set forth in Exhibit B to the Resolution of Intention to Establish District which is on file in the office of the City Clerk and incorporated herein by reference.
3. Annual Rate Determination. The City Council is hereby further authorized each year, by resolution adopted as provided in Section 53340 of the Act, to determine the specific special tax rate and

amount to be levied on each parcel of land in the District for the then current and future tax years, except that the special tax rate to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special tax may be levied at a lower rate. Such resolution is to be filed by the clerk with the County Auditor-Controller of the County of Kern on or before August 10 of the same tax year.

4. Exemption of Government Property. Properties or entities of the state, federal, or other local governments shall be exempt from the above-referenced and approved special tax only to the extent set forth in the Rate and Method, and otherwise shall be subject to tax consistent with the provisions of Section 53317.3 and 53317.5 of the Act.
5. Use of Collections. All of the collections of the special tax shall be used only as provided for in the Act and in the Resolution of Formation. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Formation.
6. Collection. The special tax shall be collected in the same manner as ordinary ad valorem taxes and shall be subject to the same penalties and the same procedure, sale and lien in any case of delinquency as applicable for ad valorem property taxes; provided, however, that the special tax may be collected by direct billing by the City of the property owners in the District or in such other manner as may be provided by the City Council.
7. Authorization. The specific authorization for adoption of this Ordinance is the provisions of Section 53340 of the Act.
8. Severability. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the District, by a Court of competent jurisdiction, the balance of this Ordinance, and the application of the special tax to the remaining parcels within the District shall not be affected.
9. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.
10. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

INTRODUCED at a Regular meeting of the City Council of the City of Wasco on the 7th day of September 2021

I HEREBY CERTIFY that the foregoing Ordinance No. 2021 - 715 was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

ABSTAIN:

ABSENT:

GILBERTO REYNA,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager
Luis Villa, Public Works Director

DATE: September 21, 2021

SUBJECT: Adopt a Resolution Approving the Final Map for Phase 1 of Tract 7373 Accepting for Public Use all Dedications for the Purpose for which they are offered, Authorizing the City Manager and the City Clerk to sign the Subdivision Agreement, and Authorizing the City Clerk to Endorse the Map.

Recommendation:

Staff recommends 1) adopt a Resolution approving the Final Map for Phase 1 of Tract 7373; 2) accept for public use the dedications for the purposes for which they are offered subject to council acceptance of the improvements; and 3) authorize the City Manager and City Clerk to sign the Subdivision Agreement, and authorize the City Clerk to endorse the map.

Background:

The Subdivider, LeOra, LLC has submitted the Final Tract Map No. 7373, Phase 1, for the City Council's approval. A Subdivision Agreement between the City and the Developer has been prepared. All improvements in the public right-of-way that have not been completed are required to be bonded for per the approved security estimate, and will not be accepted by the City until complete.

Discussion:

The City Engineer has reviewed the final map and finds it is in conformance with the Subdivision Map Act. The Subdivider has paid all the necessary fees, and the Developer has provided the tax estimate, tax certificate, subdivision guarantee, Letters of credit, and recording fees for the map.

Fiscal Impact:

None.

Attachments:

1. Resolution
2. Final Map
3. Subdivision Agreement

RESOLUTION NO. 2021 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO APPROVING THE FINAL MAP FOR TRACT NO. 7373 PHASE 1, ACCEPTING FOR PUBLIC USE ALL DEDICATIONS FOR THE PURPOSE FOR WHICH THEY ARE OFFERED, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO SIGN THE SUBDIVISION AGREEMENT, AND AUTHORIZING THE CITY CLERK TO ENDORSE THE FINAL MAP.

WHEREAS, LeOra, LLC, as a Subdivider has submitted the final map for Tract No. 7373 Phase 1 in the City of Wasco to be developed under the provisions of the Subdivision Map Act and the Wasco Municipal Code; and

WHEREAS, the Subdivider submitted the required improvement plans, and the public improvements that have not been constructed have been guaranteed by a Letter of Credit; and

WHEREAS, the Subdivider submitted the Final Map, and the City Engineer has reviewed and approved the map

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Wasco as follows:

SECTION 1: Approves the Final Map for Tract No. 7373, Phase 1, and accepts for public use all dedications for the purpose for which they are offered.

SECTION 2: Authorizes the City Manager and City Clerk to sign the Subdivision Agreement and authorizes the City Clerk to endorse the Final Map.

-o0o-

I HEREBY CERTIFY that the foregoing Resolution No. 2021 - _____ was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

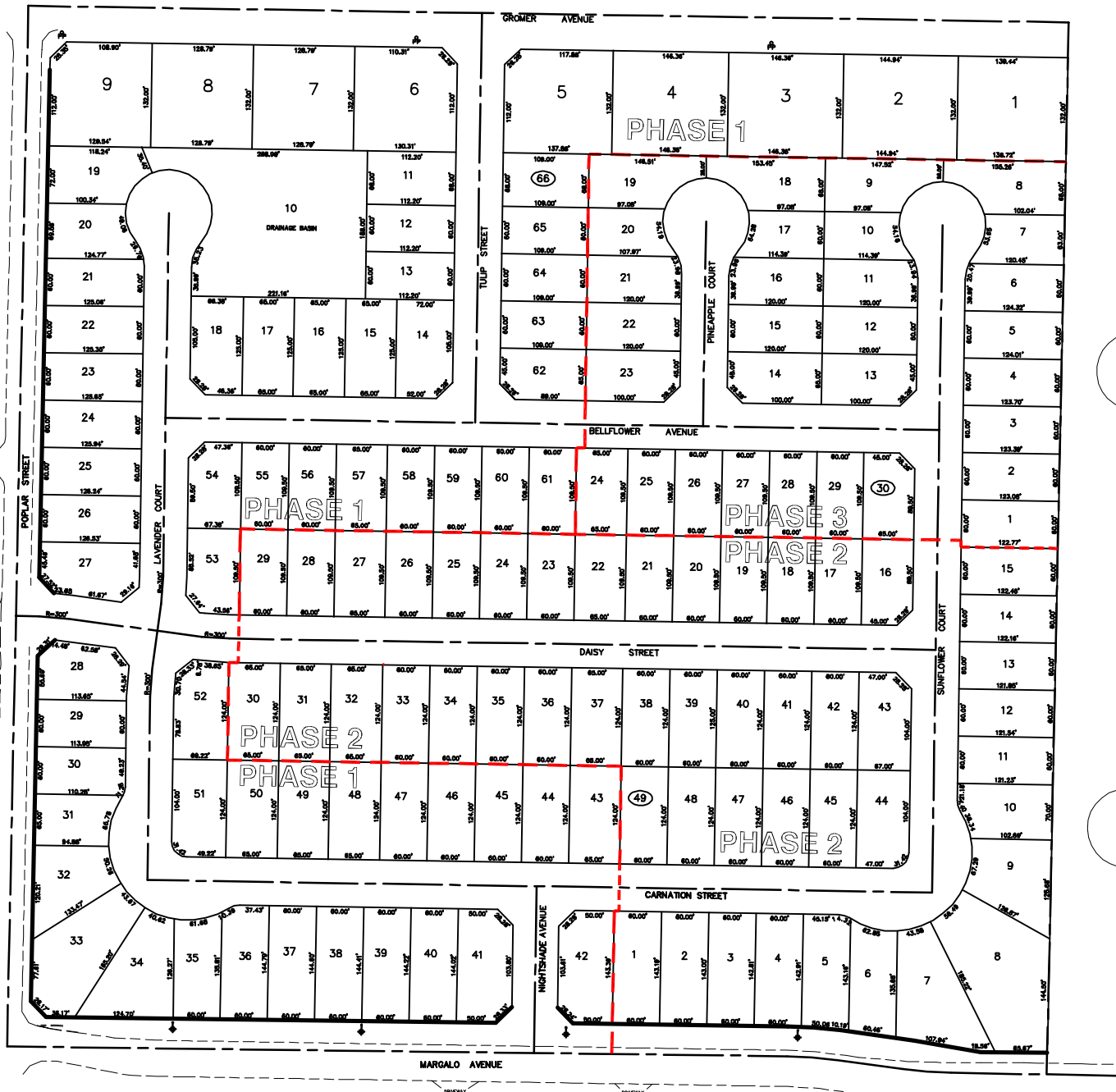
ABSTAIN:

ABSENT:

GILBERTO REYNA,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco



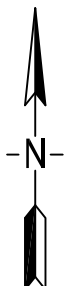
TRACT NO. 7373

PHASING PLAN

DATE: 7-27-2020

25 of 188

SCALE: 1" = 200'



AGREEMENT NO. 2021 - ____
SUBDIVISION AGREEMENT
FOR
TRACT MAP 7373 – PHASE 1 (66 LOTS)

THIS AGREEMENT entered into this 21st day of September 2021 by and between the CITY OF WASCO, a Municipal Corporation, herein referred to as the “City”; and LEORA, LLC. herein referred to as the “Developer.”

WITNESSETH:

WHEREAS, the Developer is developing and subdividing land in the City of Wasco, under the provisions of the Subdivision Map Act (Government Code Sections 66410 et. seq., referred to as the “Map Act”), and under the provisions of the Subdivision Ordinance of the City of Wasco (Wasco Municipal Code), referred to as the “Ordinance,” and

WHEREAS, the tentative map **TRACT MAP 7373** has been approved by the Planning Commission of the City (Advisory Agency), subject to certain approved exceptions and conditions; and

WHEREAS, the Developer has submitted the final map to the City Council of the City for approval in accordance with the Map Act and the Ordinance, said final map shall be referred to as the “**Final Tract Map 7373 – Phase 1**,” or “Subdivision”; and

WHEREAS, the Developer has complied with all provisions of the Map Act and the Ordinance applicable to the Subdivision, excepting only that the Developer has not completed the improvement work therefor and has not set or placed all of the permanent monuments required for the Subdivision, but desires to enter into an agreement with the City to complete the required improvement work within the time and in the manner provided herein; and

WHEREAS, the City Council of the City is willing to approve the Final Tract Map, and to accept on behalf of the City all of the streets, easements, and pedestrian ways dedicated thereon or deeded to the City in connection therewith, under the terms and conditions hereinafter more particularly set forth;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, **IT IS EXPRESSLY AGREED AND UNDERSTOOD** as follows:

I.

Concurrently upon the execution of this Agreement and upon posting by the Developer of the Improvement Security as mentioned herein, the City, by and through its City Council, does hereby agree to approve the Final Tract Map 7373 – Phase 1, and to accept all streets, easements, and pedestrian ways dedicated thereon or deeded by the Developer to the City in connection therewith. Improvement Security shall be, as hereinafter provided for, to be approved by the City Council of the City and shall be in the amounts fixed by said City Council.

II.

For and in consideration of the approval of the Final Tract Map referred to in Paragraph I hereof, and for and in consideration of the acceptance of the streets, easements, and pedestrian ways dedicated thereon or deeded to the City in connection therewith, the Developer hereby agrees as follows:

In accordance with the requirements of the City Council, the Developer shall construct, at its sole cost and expense, those improvements, shown on the plans, profiles, and specifications, all as approved by the City Engineer, and all of which are incorporated in the Agreement by reference as a part hereof, and which are generally designated as follows: Curbs, gutters, sidewalks, grading, paving, drainage facilities, landscaping, parking, sanitary sewers, water distribution system, street name signs, street lighting, and utility systems.

1. **IMPROVEMENTS TO BE CONSTRUCTED:**

- (a) Developer shall grade, pave, construct and improve all of the Streets, Easements and Pedestrian Ways dedicated to the City or deeded by the Developer to the City in connection therewith, pursuant to and in accordance with those provisions of the Wasco Municipal Code applicable thereto and, more particularly pursuant to and in accordance with the Plans and Profiles, and by this reference incorporated herein.
- (b) Developer shall install a Water Distribution System, including the construction and installation of all pipelines, appurtenances, and services to each lot, pursuant to and in accordance with those provisions of the Wasco Municipal Code applicable thereto, and more particularly pursuant to and in accordance with the Plans, and by reference incorporated herein.
- (c) Developer shall install a Sanitary Sewer System, including the construction and installation of all pipelines, manholes, appurtenances, and services to each lot, pursuant to and in accordance with those provisions of the Wasco Municipal Code applicable thereto, and more particularly pursuant to and in accordance with the Plans and Profiles, and by reference incorporated herein.
- (d) Developer shall site grade, compact, and improve building sites, so as to drain properly within the Subdivision, pursuant to and in accordance with the Plans and Specifications, and by reference incorporated herein.
- (e) Developer shall provide for all necessary Storm Drainage Facilities, including the construction and installation of pipelines, sumps, and appurtenances, pursuant to and in accordance with the Wasco Municipal Code applicable thereto, and more particularly pursuant to and in accordance with the Plans and Profiles, and by reference incorporated herein.
- (f) Developer shall construct all public utilities as required by the Wasco Municipal Code. Services from the public utilities, consisting of telephone, gas, electric, water, sewer, and cable t.v. service shall be provided for each lot within this subdivision. This shall also include a Street Lighting System.

Developer shall furnish the City with written statements from the Electric Company, Gas Company, Telephone Company, and Cable T.V. Company, specifying that financial arrangements and terms for the installation of all electrical, gas, telephone, and cable t.v. services have been made for the subdivision. The terms thereof shall guarantee the installation of said services to each lot as required at no cost to the City and shall be subject to the approval of the City Engineer.

- (g) Developer shall provide for the setting or placement of all permanent monuments required for the Subdivision by the Wasco Municipal Code. Said permanent monuments shall be placed or set in accordance with said Municipal Code and shall be located in such positions and shall be of the character and type specified therein. Property lines shall be marked with a chiseled line on the top of curb.

- (h) Developer shall, remove, relocate or replace all obstructions, or otherwise make all necessary arrangements to have said obstructions relocated at his own expense. Said obstructions and their removal and/or relocation shall be shown on all applicable plans and profiles and shall not hinder any construction.
- (i) All changes, relocations, or modifications required for the development of the proposed subdivision to existing city utilities, streets, and facilities whether within the boundaries of the subdivision or offsite, and all changes, relocations, and modifications to other public utilities including, but not limited to electric, gas, water or telephone lines, caused by the development of the subdivision shall be paid for by the Developer. If Developer damages any public or private utility, said utility is to be repaired or replaced at Developer's expense.
- (j) Developer shall furnish the City with a written statement from the U.S. Postal Service stating that all required mailboxes for the Subdivision have been installed per the specifications of the Postal Service
- (k) Developer shall when deemed necessary for emergency vehicle and/or city service vehicle access, construct temporary turnarounds and/or temporary road connections to adjoining public streets to facilitate safe ingress and egress to the development area.
- (l) Items (a) through (k) above shall be completed prior to the issuance of Certificate of Occupancy for any residence within the Subdivision.

2. **MANNER OF CONSTRUCTION:**

The improvements designated above shall be installed and constructed in accordance with all of the following:

- (a) Wasco Municipal Code.
- (b) Kern County Standards
- (c) The California Subdivision Map Act.
- (d) Approved plans, specifications, and profiles.
- (e) Standard City specifications and grades.
- (f) State of California Business and Transportation Agency Standard Specifications (Current Edition).
- (g) Good engineering practices and workmanlike manner.

3. **TIME FOR COMPLETION:**

All of said improvements shall be completed in full in accordance with the terms of this Agreement and to the satisfaction of the City Engineer within twelve (12) months from the date of approval of this Agreement to wit: on or before September 7, 2022, or any extension of said completion date granted by the City Council. Any work which affects any existing City maintained road or traffic thereon shall be completed within thirty (30) working days from start of work.

4. **INSPECTION AND APPROVAL OF WORK:**

- (a) All improvement work shall be subject to inspection by the City's designee and shall be completed to their satisfaction.
- (b) When all of the required improvement work has been satisfactorily completed, upon written application of the Developer, the City's Designee and the Developer and his Engineer or designee shall inspect and approve the same within a reasonable time and shall forward his recommendation to City Council showing the date of inspection and approval.
- (c) If the City Council approves the recommendation, it shall make its order accepting or approving the work of improvement.
- (d) Such order of acceptance or approval made by the City Council shall be deemed operative from the time of approval of the work of improvement by the City's designee, as shown in his said certificate.
- (e) Except as otherwise provided, the Developer and surety shall be deemed released from liability for damage or injury to such work so accepted by said Council, and from the maintenance thereof, from and after the time said order is operative. However, the foregoing provision shall not relieve the Developer or its surety from any damage or injury to such work of improvement or any maintenance required therefor arising from any other work undertaken by the Developer or its surety, or as may necessarily be done by the City in the performance of any part of the required improvement work as a result of any default in the performance of this Agreement by the Developer or its surety or arising from any willful act or negligent act or omission of the Developer or its surety or their contractors, agents or employees, or arising from defective work or labor done or defective materials furnished in the performance of the Agreement.
- (f) At the time of making of the order of acceptance or approval of such work, as the case may be, said Council shall affect a reduction of the improvement security in accordance with other provisions of this Agreement.
- (g) The provisions of (e) notwithstanding, the Developer shall not be released from liability arising from damage or injury to such work of improvements that may have been accepted by the City that has been caused by the construction of new homes and related accessories in the subdivision. A close-out inspection shall be called for by the Developer/Developer prior to the release of the final building permit. All damage or injury shall be corrected prior to the issuance of a certificate of occupancy for the final building.
- (h) Pursuant to City of Wasco Municipal Code Section 16.12.050(C), no final certificate of occupancy shall be granted for any building until such time that all required improvements for Tract 7373 Phase 1 have been completed and accepted by the City Council.

5. **CHANGES AND ALTERATIONS:**

- (a) The Developer shall make no change or alteration in such work except with written approval by the City Engineer.

- (b) The Developer shall carry out such changes or alterations in such work as may be ordered by the City Engineer in the exercise of its reasonable discretion, as follows:
 - (i) As required by the Map Act;
 - (ii) As consistent with City ordinance, applicable at the time of approval of the tentative map; or
 - (iii) As made necessary by conditions of the soil, topography, drainage, flood hazard, or fire hazard not foreseen at the time of approval of the tentative map.
- (c) In any case, all changes or alterations in such work shall be otherwise performed and fully and timely completed in accordance with all other provisions of this Agreement.
- (d) Within sixty (60) days following City's acceptance of subdivision improvements, Developer shall provide City Engineer with original set of improvement plans and electronic drawings (AutoCAD) containing the appropriate posted "Record Drawings" changes. Changes shall be clearly noted as changes on said plans.

6. **GUARANTEE AGAINST DEFECTS:**

The Developer hereby guarantees all features of the work of improvement for a period of 12 months following the acceptance of the work against defective work or labor done, or defective material furnished, in the performance of this Agreement; and Developer agrees to correct, repair or replace promptly when demanded by the City all such defective work or labor done, or defective materials furnished, as may be discovered within such 12 month period and reported to the City Council.

Provided further that the Developer shall repair or replace all features of the work of improvement as directed by the City Engineer that are damaged by construction, including but not limited to dwellings and related accessory features, that occurs after the expiration of the 12 month warrantee. The issuance of the final certificate of occupancy for a dwelling shall be withheld until the damage is corrected.

7. **IMPROVEMENT SECURITY:**

- (a) As provided for in the Wasco Municipal Code, the Agreement shall be secured by good and sufficient security, which shall be filed with the City prior to certification of the final map by the City Engineer. Such improvement security shall consist of either (1) a faithful performance bond or bonds by one or more duly authorized corporate sureties; or (2) a deposit, either with the City or a responsible escrow agent or trust company, selected by the City, of cash or negotiable bonds of the kind approved for securing deposits of public moneys, or (3) an irrevocable instrument of credit from one or more responsible financial institutions regulated by State or Federal government and pledging that the funds are on deposit and guaranteed for payment on demand by the City. The forms of all documents relating to such security shall be subject to approval by the City Attorney. The corporate surety bond shall conform substantially with the form set forth in Section 66499.1 of the Map Act. The estimated cost of the various features of the work of improvement shall be used, if applicable, as the basis for the reduction of bonds in connection with the final completion of any feature of the work (or any unit thereof). Costs referred to herein are as set forth on the Costs Estimate for the Subdivision, as submitted for approval to, and on file in the office of, the City Engineer.

- (b) The estimated cost of the various features of the work of improvement, to be used as the basis for determination of the amount of such security and for reduction of security in accordance with other provisions of this Agreement, is as follows:

Site Preparation and Grading.	\$ 4,333.50
Sewer Improvements	\$ 32,533.50
Water Improvements	\$ 25,544.50
Storm Drain Improvements	\$ 32,974.00
Street Improvements	\$ 767,227.00
Utilities	\$ 0.00
Amenities and Special Construction.....	\$ 0.00
SUBTOTAL	\$ 862,612.50
 20% Contingency	 \$ 172,522.50
TOTAL	\$1,035,135.00

- (c) Said improvement security shall be in the amount of 100% of the total estimated cost of the improvement, conditioned upon the faithful performance of the Agreement, as follows:

- (1) The faithful performance and full and timely completion of the work according to this Agreement; and
- (2) The guarantee and maintenance of the work of improvement for a period of 12 months following the completion and approval thereof, against defective work or labor done, or defective materials furnished, in the performance of this Agreement; and

- (d) Said improvement security shall also be in an additional amount of 50% of the total estimated cost of the improvement, securing payment to the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials to them for the improvement; and if such portion of the improvement security is:

- (1) A cash deposit, suit may be maintained against the holder of such deposit; or
- (2) A surety bond, suit may be maintained against the surety, or an instrument of credit, suit may be maintained against the financial institution of obligating itself as trustee on such instrument.

8. **REDUCTION AND RELEASE OF SECURITY:**

- (a) Improvement security may be reduced or released on order of the City Engineer in accordance with this Section.
- (b) Improvement security given for the faithful performance of the Agreement shall be reduced at the time and in the manner provided herein, subject to retention of security for defects as hereinafter provided.
- (c) Whenever improvement security is reduced on account of approval of units of the work, such shall be subject to retention of security for defects and security against damage as hereinafter provided.
- (d) In any case, however, the City in the exercise of its reasonable discretion shall retain ten percent (10%) of the improvement security for faithful performance to secure the

maintenance and guarantee of such improvement work for a period of 12 months following the operative date of the order of said Council for the acceptance or approval thereof, as the case may be, and (in the case of acceptance or approval of a unit of the improvement work as its progresses) to secure the maintenance and guarantee of the work of improvement so accepted or approved against damage thereto by any other work undertaken by the Developer or its surety. The amounts of improvement security so retained shall be finally released one (1) year following the operative date of the order of the city Council for the acceptance or approval thereof, as the case may be, provided that no defective work or labor done or defective materials furnished in the performance of the work has been discovered within such 12 month period and reported in writing to the said Council, and further provided (in the case of acceptance of a unit or units of the improvement work as it progresses) that no damage has been done to the required improvement work so accepted by any other work undertaken by the Developer or its surety.

- (e) Improvement security for payment to the contractor, or any of his subcontractors of any person renting equipment or furnishing labor or materials to them for the work of improvement may, six (6) months after the completion of the work of improvement and the making of the order for its acceptance or approval, as the case may be, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the City, and if no such action is filed, such improvement security may be released in full.

9

COMPLETION BY SURETY OR CITY:

- (a) If the City Council, in the exercise of its reasonable discretion, shall determine:
 - (1) That the Developer has failed to properly and fully complete all of the work of improvement in accordance with this Agreement, and within the time (or any extension of time) provided herein; and
 - (2) That the Developer has failed or neglected to begin work, or any feature of the work, within a time which will reasonably allow its completion within the time (or any extension of time) provided in this Agreement; or
 - (3) That the Developer has created an unsafe or hazardous condition which requires immediate correction.
 - (4) That the Developer has abandoned any of the work; or
 - (5) That the Developer has failed to keep the work under direct control of a superintendent, manager, engineer, or other competent agent.
 - (6) That the Developer (if he shall be an individual) has been declared incompetent or placed under the care of a guardian or conservator or has disappeared; or
 - (7) That the Developer has filed a petition in bankruptcy or has been declared bankrupt, then the City Council may determine to, and the City may give the Developer and its Surety fourteen (14) days' written notice to proceed with the work, without prejudice to any other remedy the City may have in law or equity.
- (b) If the Surety shall proceed with the work, the Surety shall be subject to all of the provisions of this Agreement as in the case of the Developer.

- (c) If the Developer or its Surety shall fail or neglect to proceed with the work diligently and in good faith in accordance with this Agreement after such notice has been given, the City may thereafter, at its sole option and without prejudice to any other remedy, provide the necessary supervision, equipment, materials and labor as it may determine necessary to undertake and complete the work of improvement or any part thereof in the manner required by this Agreement, by independent contract or by City forces, all for the account and at the expense of the Developer, and the Developer and its Surety shall be liable to the City and shall pay the City on demand, any expenses incurred by the City in the course thereof.

10. **INDEMNIFICATION PROVISIONS:**

- (a) The Developer shall, and it does hereby agree to hold harmless and indemnify the City and its Council, officers, and employees, from every liability, claim suit, or demand which may arise or may be made by reason of:
 - (1) Any act, omission, or neglect of the Developer, its engineers, employees, agents, or contractor; or
 - (2) Any injury to any person, death of any person, or damage to any property, sustained by any person, firm or corporation while in or upon the parcel of land herein mentioned and for which the Developer is legally liable (excepting negligence of the City, or its officers or employees); or
 - (3) Any injury to or death of the Developer or any officer or employee of the Developer, or any damage to the property of any such person, firm or corporation, and for which the Developer is legally liable (excepting any negligence of the City or its officers or employees); or
 - (4) Any damage to or taking of any property arising from said plans, specifications, or profiles, or arising from the work of construction or the conduct thereof.
- (b) The Developer at its own cost, expense, and risk shall defend all legal proceedings which may be brought against the City, its Council, officers, and employees, on any liability suit, claim or demand which it has agreed indemnify them against herein, and shall satisfy any resulting judgment that may be rendered against any of them.
- (c) It is mutually agreed that the Developer's surety under the improvement security for faithful performance shall not be deemed liable for performance of any of the foregoing provisions of this section unless said surety shall undertake the completion of any improvement or the conduct of work required to be done under this Agreement, and then only to the extent of any act, omission or neglect of the Surety, its engineers, employees, agents or contractors in the course of the completion of such improvements or the conduct of such work by said Surety.

11. **ATTORNEY'S FEES ON SUIT:**

If any suit be brought by the City for the recovery of any sum due under this Agreement, for any damages for the breach of this Agreement, or to compel performance of this Agreement, the City shall be entitled to such portion of such reasonable attorney's fees as the Court may determine, in addition to its cost of suit.

12. **INSURANCE REQUIREMENTS:**

- (a) The Developer shall at all times during the course of any of the improvement work, secure and maintain, and shall cause its contractors to secure and maintain, in the manner

required by law, workers' compensation insurance as required by the California Labor Code and amendments thereto, and shall furnish to the City satisfactory evidence thereof.

- (b) The Developer shall maintain, and pay premiums on, a policy of comprehensive liability insurance in the amounts given below, in form and with insurance companies satisfactory to the City, containing an endorsement including the City, its Council, officers, and employees as additional named insured.
 - (c) The limits of said policy shall be in amounts not less than Bodily Injury, \$500,000 per person and \$1,000,000 per accident; and Property Damage \$500,000 per accident and \$1,000,000 aggregate amount.
 - (d) Prior to undertaking any work of construction, the Developer shall file with the City Clerk a true copy of said policy of insurance, with the endorsement thereon aforementioned, certified by the carrier.
 - (e) The Developer shall continue to so maintain said policy and pay the premiums thereon for a period of one (1) year from and after the acceptance or approval, as the case may be, of the entirety of the improvement work.
 - (f) In case the estimated cost of the required work of improvement is found to be less than \$10,000, the City Council may approve limits of insurance coverage in lesser amounts than those specified in (c) above.
13. **FEES:**
The Developer shall pay all fees and charges scheduled pursuant to the Wasco Municipal Code as may be amended from time to time.
14. **QUIMBY/ PARK IMPACT FEES**
Pursuant to the Wasco Municipal Code, the Developer shall pay Quimby/ Park Impact fee, which includes Neighborhood Parks fee and Community Parks fee.
15. **FINAL MAP FEE:**
Pursuant to the Wasco Municipal Code, the Developer shall pay a Public Works Final Map fee which includes all charges for checking and recording the Final Map performed by the City.
16. **PUBLIC WORKS INSPECTION FEE:**
Pursuant to the Wasco Municipal Code, the Developer shall pay a Public Works Inspection fee which includes all charges for inspection by the City of the Subdivision.
17. **COMMUNITY FACILITIES DISTRICT:**
Prior to any lot being sold to an individual buyer, the owner(s) shall agree to annex the entire subdivision into a Community Facilities District.
18. **ENGINEERING FEE:**
Pursuant to the Wasco Municipal Code, the Developer shall pay an Engineering Fee which includes all charges for Improvement Plan Check performed by the City. This fee shall be a minimum of (1) percent of the engineer's estimate.

IN WITNESS WHEREOF, the parties to this Agreement have executed the same on the day and year first mentioned herein.

RECOMMENDED FOR APPROVAL

CITY OF WASCO

By _____
Juan Pantoja, City Engineer

By _____
M. Scott Hurlbert, City Manager

APPROVED AS TO FORM

ATTEST BY:

By _____
City Attorney

By _____
Maria Martinez, City Clerk

“DEVELOPER”

By _____ By _____



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager
Keri Cobb, Community Development Director
Tom Schroeter, City Attorney

DATE: September 21, 2021

SUBJECT: Adopt a Resolution Authorizing the Deferral of Certain Impact Fees for 11 Duplexes and One Single Family Residence as Approved in Site Plan Review (SPR) 19-501, Delgado Villas, Assessor's Parcel Number 488-060-06 as Provided for Under Title 13 of the Wasco Municipal Code and Government Code Section 66007

Recommendation:

Staff recommends, adoption of a resolution of the city council of the City of Wasco authorizing the deferral of certain impact fees for 11 duplexes and one single-family residence as approved in site plan review (spr) 19-501, assessor's parcel number 488-060-06 as provided for under title 13 of the Wasco municipal code and government code section 66007

Background:

The Delgado Villas project at 2165 Jubilee was approved on December 5, 2019. The project consists of 11 duplexes and one single unit on an existing 1.6-acre site. As the project is nearing the construction phase, the developer has requested a deferral of the impact fees that would normally be paid before a building permit is issued.

Discussion:

The fees being requested for deferral are water connection, sewer connection, traffic impact, sanitation, and parkland.

Government Code 66007 and the City of Wasco Municipal Code, Chapter 13.24, Traffic Impact Fee Ordinance, Chapter 13.10, Water Impact Fee Ordinance, Chapter 13.16, Sewer Connection Charges Ordinance, and 13.06.050 allow for the deferral of payment of impact fees. Chapter 13.24.100 of the Wasco Municipal Code requires the City Council to make certain findings for deferral.

These findings include the following:

1. That the current state of the City is such that the deferment of the impact fees required by Chapter 13.24 will stimulate the economy and enhance the provision of jobs; and
2. That the deferment of the impact fees required by Chapter 13.24 will not materially affect the ability of the City to deliver its capital improvement program.

Staff believes these findings can be made for the project given the City's desire to stimulate the local economy and be business-friendly. In addition, the water and sewer connection fees will only be deferred until the developer requests an encroachment permit for connection to these systems. The traffic, sanitation, and parkland fees will only be deferred to the final inspection and issuance of a Certificate of Occupancy for each building, so this deferral will not materially affect the City's ability to implement its capital improvement program.

Fiscal Impact:

The deferred fees will still be available for use in implementing programmed traffic, water, sewer, sanitation, and parkland improvements, simply delayed until the connections are made, or units are completed. The City may enjoy future property tax revenue upon the development of the property.

Attachments:

1. Resolution

RESOLUTION NO. 2021 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO AUTHORIZING THE DEFERRAL OF CERTAIN IMPACT FEES FOR 11 DUPLEXES AND ONE SINGLE-FAMILY RESIDENCE AS APPROVED IN SITE PLAN REVIEW (SPR) 19-501, ASSESSOR'S PARCEL NUMBER 488-060-06 AS PROVIDED FOR UNDER TITLE 13 OF THE WASCO MUNICIPAL CODE AND GOVERNMENT CODE SECTION 66007

WHEREAS, Next Generation, LLC (Hector Delgado), has requested deferral of payment of water and sewer connection fees until issuance of an encroachment permit for connection of its development (the "Development") to the City of Wasco ("City") sewer and water systems and of sanitation, traffic, and parkland impact fees at the time of final inspection on each of the 11 duplexes and the single-family residence; and

WHEREAS, Government Code Section 66007 prohibits collection of fees or charges on a residential development for the construction of public improvements or facilities until the date of the final inspection or issuance of certificate of occupancy, whichever occurs first, except that utility service fees may be collected at the time of application for utility service; and

WHEREAS, Wasco Municipal Code Sections 13.10.050 and 13.16.030 allow for the deferral of water and sewer impact fees to a later date by resolution and Municipal Code Sections 13.06.050 and 13.24.100(C) allow for the deferral of sanitation and traffic impact fees by resolution, and Municipal Code Section 13.26.090.C(2) allows for payment of parkland impact fees prior to issuance of building permits on any multi-family units; and

WHEREAS, the City Council finds that the current state of the city is such that the deferment of the impact fees will stimulate the economy and enhance the provision of jobs and will not materially affect the ability of the city to deliver its capital improvement program.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Wasco as follows:

SECTION 1: That the foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2: That the sewer and water impact fees may be deferred for each of the remaining duplexes and single-family units until such time as the Developer requests

an encroachment permit for connection to the City sewer and water systems.

SECTION 3: That the sanitation, traffic, and parkland impact fees shall be paid pursuant to Government Code Section 66007(a) upon final inspection of each unit or issuance of the certificate of occupancy, whichever occurs first.

SECTION 4: With regard to the traffic impact fee and pursuant to Wasco Municipal Code Section 13.24.100.C.4, a penalty is imposed equal to 100% of the amount of the traffic impact fees on Developer if Developer fails to pay the impact fees by the point in time specified herein.

SECTION 5: That in the event the Developer fails to pay the traffic impact fees by the point in time specified herein, Developer shall further forfeit the future right to defer such fees on the remaining Development parcels.

-o0o-

I HEREBY CERTIFY that the foregoing Resolution No. 2021 - _____ was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

ABSTAIN:

ABSENT:

GILBERTO REYNA,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: Scott Hurlbert, City Manager
Luis Villa, Public Works Director

DATE: September 21, 2021

SUBJECT: Adopt a Resolution Authorizing the City Manager to sign and enter into an Agreement with the County of Kern to obtain Community Development Block Grant funding for the 16th Street Rehabilitation Project.

Recommendation:

Staff recommends the City Council adopt a resolution to authorize the City Manager to sign and enter into an Agreement with the County of Kern to obtain Community Development Block Grant (CDBG) funding for the 16th Street Rehabilitation Project.

Background:

The Congress of the United States enacted Title I of the Housing and Community Development Act of 1974, which provides for Community Development Block Grants for eligible activities. The County has submitted the required documents to the Department of Housing and Urban Development "HUD" for receipt of a Community Development Block Grant.

The County of Kern and the City of Wasco entered into a Community Development Block Grant Cooperative Agreement on July 18, 2017, wherein the parties agreed to undertake activities eligible for Grant assistance within the City Limits.

Discussion:

The City has requested the use of Grant funds to provide for the design, rehabilitation, and construction of 16th Street between Griffith Avenue and Highway 43 to include existing pavement grinding and removal, repaving, saw cutting, replacement of curb and gutter sections to improve water flow, striping, and installation of new ADA ramps.

In order to move forward with the Project, the Council must sign the agreement with the County of Kern concerning the Community Development Activity. Once approved by Council, the County will have the agreement signed by the County of Kern.

The estimated costs for the Project will be split between the City and County as shown in the chart below.

Construction	County Grant Funds CD Activity #20.18.1	City In-Kind Contributions and Measure X Funds	Total
Grind & haul 3 inches existing asphalt concrete	\$18,500	\$0	\$18,500
Grade & proof roll existing subgrade	\$7,500	\$0	\$7,500
Asphalt Paving - 3"	\$128,250	\$0	\$128,250
Remove & replace cross gutter	\$12,000	\$0	\$12,000
Remove & replace curb & gutter	\$1,750	\$0	\$1,750
Remove & replace ADA ramp	\$90,000	\$0	\$90,000
Sawcut	\$1,500	\$0	\$1,500
Adjust valve cover to grade	\$6,000	\$0	\$6,000
Adjust manhole cover to grade	\$14,400	\$0	\$14,400
Striping	\$2,500	\$0	\$2,500
Post-Construction survey	\$0	\$2,500	\$2,500
Sch A Construction Total	\$282,400	\$2,500	\$284,900
Design/other costs	\$0	\$28,490	\$28,490
Advertisement	\$0	\$1,500	\$1,500
Construction Inspection	\$0	\$42,735	\$42,735
Contract Administration/HUD Monitoring	\$0	\$14,245	\$14,245
Contingency	\$0	\$30,190	\$30,190
Escalation	\$15,394	\$0	\$15,394
Project Delivery Cost	\$17,000	\$0	\$17,000
Total Project Costs	\$314,794	\$119,660	\$434,454

In order to reduce the fiscal impact to the City, the City will be performing Design, Construction inspection, and Contract Administration in house. Post-Construction survey, Sch A Construction, and Advertisement will be out-of-pocket expenses.

Fiscal Impact:

The 2021-2022 budget included \$20,206.00 of Measure X Funds to cover our portion of this Project. Staff finds it unlikely that this Project will result in contingencies totaling the estimate shown above. Not including Contingencies, the City's portion of the Project cost would be \$6,500.00 leaving \$13,706.00 for contingencies.

Attachments:

1. Resolution
2. Agreement

RESOLUTION NO. 2021 -

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO AUTHORIZING THE CITY
MANAGER TO SIGN AND ENTER INTO AN AGREEMENT WITH THE COUNTY OF KERN TO
BE PROVIDED COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE 16TH
STREET REHABILITATION PROJECT**

WHEREAS, the City Council of Wasco wishes to rehabilitate the Public Improvements on 16th Street from HWY 43 to Griffith Ave.; and

WHEREAS, the City will be conducting oversight of Grant funding throughout design and construction for the Community Development Block Grant Funding of the 16th Street Rehabilitation Project; and

WHEREAS, the City of Wasco wishes to enter into an Agreement with the County of Kern attached as hereto as Exhibit "A" concerning their empowerment under the Housing and Community Development Act to distribute funding.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Wasco as follows:

SECTION 1: The City of Wasco authorizes the City of Manager to sign and enter into an agreement with the County of Kern.

-o0o-

I HEREBY CERTIFY that the foregoing Resolution No. 2021 - _____ was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

ABSTAIN:

ABSENT:

Gilberto Reyna,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco

**AGREEMENT
COMMUNITY DEVELOPMENT ACTIVITY
CITY OF WASCO – 16th Street Rehabilitation Project
CD#21.20.1
(County - City of Wasco)**

THIS AGREEMENT ("Agreement") is made and entered into as of _____, ("Execution Date") by and between the COUNTY OF KERN, a political subdivision of the State of California ("COUNTY"), and the CITY OF WASCO within the County of Kern ("CITY"),

RECITALS:

(a) The Congress of the United States has enacted Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.), ("Act"), which provides for Community Development Block Grants for eligible activities;

(b) COUNTY has submitted the required documents to the Department of Housing and Urban Development ("HUD") for receipt of a Community Development Block Grant, Catalogue of Federal Domestic Assistance ("CFDA") Number 14.218, ("Grant") pursuant to the Act;

(c) COUNTY and CITY entered into a Community Development Block Grant Cooperative Agreement on July 18, 2017 wherein the parties thereto agreed to undertake activities eligible for Grant assistance within the corporate limits of CITY;

(d) COUNTY is empowered under the Act to administer Grant funds pursuant to the Act, and to enter into project/activity agreements with cities which have executed Community Development Block Grant Cooperative Agreements with COUNTY for Community Development projects/activities;

(e) CITY has requested the use of Grant funds to provide for the design, rehabilitation and construction of 16th Street, between Griffith Avenue and Highway 43, to include existing pavement grinding and removal, repaving, sawcut, rehabilitation of sections of curb and gutter which no longer allow proper drainage flow, replace pavement markings, install new ADA curb ramps and related improvements within the City of Wasco; and

(f) COUNTY desires to assist CITY by providing funds for the design, rehabilitation and construction of 16th Street, between Griffith Avenue and Highway 43, to include existing pavement grinding and removal, repaving, sawcut, rehabilitation of sections of curb and gutter which no longer allow proper drainage flow, replace pavement markings, install new ADA curb ramps and related improvements within the City of Wasco.



AGREEMENT:

1. Definitions

a. Except to the extent modified or supplemented by the Grant Agreement between COUNTY and HUD dated February 23, 2021, ("HUD Grant to COUNTY") any term defined in Title I of the Act, or the HUD Community Development Block Grant regulations at 24 CFR Part 570 shall have the same meaning when used herein.

b. "Program" means COUNTY's Community Development Program, including the administration thereof, with respect to the terms of the HUD Grant to COUNTY.

c. "Project" means the City of Wasco – 16th Street Rehabilitation Improvements, all as more fully described in **Schedule "A"**, attached hereto and incorporated herein by this reference as if set forth in full.

d. "Activity" means the design, rehabilitation and construction of 16th Street, between Griffith Avenue and Highway 43, to include existing pavement grinding and removal, repaving, sawcut, rehabilitation of sections of curb and gutter which no longer allow proper drainage flow, replace pavement markings, install new ADA curb ramps and related improvements, all as more fully described in **Schedule "A"**, attached hereto.

e. "Program Income" shall have, with respect to the Project/Activity undertaken pursuant to this Agreement, the same meaning as the definition found in the HUD Community Development Block Grant regulations at 24 CFR part 570.500(a)(1), as amended, at 24 CFR part 570.504, and as defined in HUD Training Bulletin CPD-90-1, dated April 1990, entitled "Program Income".

f. "Change in Use Restriction Period" means that period which starts upon filing of the Notice of Completion, in the case of construction work, or upon the close of escrow if Grant funding is solely for the acquisition of property, and ends five (5) years after HUD ceases to consider the CITY to be part of the COUNTY's entitlement jurisdiction.

CITY may cease to be part of COUNTY's entitlement jurisdiction by:

Expiration of, or CITY's failure to renew, the CITY/COUNTY Cooperative Agreement dated July 18, 2017; or

HUD's order to cancel the CITY/COUNTY Cooperative Agreement dated July 18, 2017; or

COUNTY ceasing to be a Grant entitlement jurisdiction; or

The federal government's termination of the Grant program.

g. "Expiration of Agreement" means the date of expiration of the Change in Use Restriction Period or the date of resolution of all monitoring findings as determined solely by COUNTY, whichever occurs last.



h. "Subgrantee" and "Subrecipient" as these terms are used in any of the attached exhibits, means CITY.

i. Whenever duties or obligations are performed jointly by CITY and COUNTY, CITY and COUNTY will be referred to as "PARTIES".

2. Maximum Amount Payable Under Agreement and Mode of Payment

a. COUNTY shall reimburse CITY, or its designee(s), through progress payments for Project/Activity costs incurred pursuant to this Agreement upon CITY making satisfactory progress, as determined solely by COUNTY, towards the completion of the Project/Activity detailed in the attached **Schedule "A"**; provided, however, that the total amount made available by COUNTY through this Agreement and payable to CITY, or its designee(s), shall not exceed THREE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED NINETY-FOUR DOLLARS (\$314,794). Unless PARTIES otherwise expressly agree in writing, CITY agrees to accept sole financial responsibility for all costs related to this Project/Activity in excess of the THREE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED NINETY-FOUR DOLLARS (\$314,794) made available by COUNTY pursuant to this Agreement.

b. COUNTY's duty to pay CITY is expressly contingent on COUNTY's receipt and continued use of Grant funds from the federal government allocated for this Project/Activity. In the event such funds are not received by COUNTY, or are reallocated by HUD after receipt and prior to completion of the Grant funded Project/Activity, this Agreement shall be immediately terminated or suspended as of the date the Grant funds are or become unavailable, and COUNTY shall have no further obligation to CITY under this Agreement until such time, if ever, that Grant funds are approved by HUD and allocated for the Project/Activity which is the subject of this Agreement. CITY agrees to indemnify and hold COUNTY harmless pursuant to the indemnification provisions of this Agreement from any costs, liabilities, losses, damages or expenses incurred as a result of termination of the Agreement due to unavailability of the Grant funds for this Project/Activity.

c. Payments shall be made to CITY, or its designee(s), upon CITY's submittal to COUNTY of a monthly certified claim executed by a properly designated official of CITY indicating the percentage of the Project/Activity that has been completed. Said certified claims shall be itemized and properly documented to clearly show the items, tasks or services for which reimbursement is being claimed and the basis for cost computation whether by cost per hour, cost per weight, cost per task or other measurement as agreed by and between PARTIES, as more fully described in the attached **Schedule "A"**.

d. After receipt and approval by COUNTY of a monthly certified claim for construction, COUNTY shall make a payment to CITY, or its designee(s), in the amount of ninety-five percent (95%) of COUNTY's pro rata portion of the project construction costs. The balance of the cumulative five percent (5%) retention from each claim shall be paid to CITY thirty-five (35) days after CITY files a Notice of Completion and after COUNTY has verified CITY's satisfactory compliance with Paragraphs 5 and 6 of this Agreement. The foregoing five percent (5%) retention is subject to the project construction contractor's right to substitute securities as explained in the document entitled "Withheld Contract Funds Certification" attached hereto as **Exhibit "A"** and incorporated herein by this reference as if set forth in full. The party entering into the construction contract with the prime contractor shall ensure



compliance with the requirements set forth in the attached **Exhibit "A"**. CITY agrees that COUNTY is hereby empowered to make an independent determination of the percentage of the Project/Activity which has been satisfactorily completed and any such determination by COUNTY is conclusive. There will be no retention on monthly claims for architectural or design services.

3. CITY's Obligations

In addition to CITY's obligations as set forth in other sections of this Agreement, CITY agrees to perform the following specific duties:

a. CITY shall be responsible for implementation of this Project/Activity. Implementation shall include preparation of specification documents and plans if necessary; solicitation and hiring of contractors; construction engineering and inspection; contract administration; and HUD compliance monitoring services. CITY will provide COUNTY with all plans and specifications, including changes requested during construction, for COUNTY review and approval prior to their use.

b. CITY agrees that COUNTY may terminate, suspend and/or reduce the amount of Grant funding provided for in this Agreement if all work performed by CITY is not completed satisfactorily and within the budgetary limits and time schedule milestones provided for in this Agreement. The length of any suspension or the amount of the reduction of Grant funding shall be at COUNTY's sole option and will be principally based on compliance with Project/Activity specifications and plans, and on timely initiation of CITY's design and/or construction obligations under this Agreement. COUNTY agrees that delays in completion of the work subject to this Agreement may result for reasons outside the control of CITY, and agrees that COUNTY will extend the time for completion of the work for unavoidable delays for a reasonable period, as determined solely by COUNTY. However COUNTY shall not be obligated to pay or to otherwise reimburse CITY for work performed subject to this Agreement if Grant funding for the Project/Activity is revoked or suspended by HUD due in part or whole to the delay in the completion of the work contemplated by this Agreement.

c. CITY shall be responsible for complying with all applicable local, state, and federal regulations, including, but not limited to, the monitoring of construction for compliance with the federal labor standards contract requirements set forth in the "Preconstruction Checklist for Contractors" attached hereto as **Exhibit "B"** and incorporated herein by this reference as if set forth in full. If CITY hires a consultant to provide compliance monitoring required to ensure to the satisfaction of HUD and COUNTY, that all applicable regulations are met during the implementation of this Project/Activity, CITY shall monitor the consultant's compliance efforts and shall remain responsible to COUNTY for providing compliance monitoring records in a form acceptable to COUNTY. CITY agrees to become familiar with the applicable statutes, regulations and guidelines governing the Grant program. All applicable statutes, regulations, guidelines, codes, rules and executive orders referred to in this Agreement are as from time to time amended.

d. CITY or any contractors hired by CITY to perform work on the Project/Activity shall obtain any and all permits necessary to implement this Project/Activity from appropriate state, COUNTY and/or CITY agencies.



e. CITY (in collaboration with COUNTY) shall conduct a pre-bid and a preconstruction conference for the purposes stated within the document, "Material Covered at Preconstruction Conference" (**Exhibit "C"**), attached hereto and incorporated herein by this reference as if set forth in full.

f. CITY shall accept title to and be responsible for the maintenance and/or operation of the new office and warehouse air filtration systems, portable toilets and handwashing stations, park and public outreach signs, PPEs including gloves, face shields, protective masks, office and warehouse restroom upgrades and sanitizing stations, according to the terms of this Agreement and all applicable local, federal and state laws and regulations.

g. CITY shall be responsible for the control and safety of CITY officers, employees, agents, and invitees during the implementation of this Project/Activity. CITY shall take all actions necessary to ensure the safety of its employees and invitees during the implementation of the project and during the subsequent maintenance and/or operation of the new office and warehouse air filtration systems, portable toilets and handwashing stations, park and public outreach signs, PPEs including gloves, face shields, protective masks, office and warehouse restroom upgrades and sanitizing stations funded pursuant to this Agreement.

h. CITY shall cooperate fully with COUNTY in undertaking, monitoring and completing this Project/Activity.

i. CITY shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project/Activity to be completed under this Agreement.

j. Subsequent to bid opening, if the Director of COUNTY Planning and Natural Resources Department determines that funds budgeted herein are insufficient to satisfactorily accomplish or complete the work referenced in this Agreement, CITY will have thirty (30) calendar days from the date of such determination to obtain additional funding beyond COUNTY's maximum financial obligation or satisfactorily reduce the scope of the work, as provided for herein. If CITY does not obtain the necessary additional funding, or a reduction of scope is not successful in satisfactorily lowering overall Project/Activity costs, PARTIES hereby agree to mutually terminate this Agreement according to the requirements and standards of 2 CFR part 200.339, "Termination". In the event of termination, the work contemplated herein shall be abandoned and COUNTY shall incur no liability whatsoever to CITY for expenses incurred after termination of this Agreement or for costs related to any subsequent completion of the work contemplated by this Agreement.

k. CITY shall, as part of its contract administration responsibility, publish in a newspaper of general circulation, in trade journal publications and in minority oriented publications, a notice soliciting small, and (as applicable) Section 3 business participation in this Grant funded Project/Activity. Prior to submitting a notice to a newspaper for publication, CITY shall obtain approval from COUNTY concerning the content of these required newspaper notices.

l. CITY shall be responsible, during the Change in Use Restriction Period, for the continued use (for the purpose described herein) of the 16th Street rehabilitation project funded pursuant to this Agreement and shall comply with federal property management regulations

and standards in accordance with 24 CFR part 570.505 "Use of Real Property" (applicable to expenditure of Grant funds in excess of TWENTY FIVE THOUSAND DOLLARS [\$25,000.00]); 24 CFR part 570.501, "Responsibility for Grant Administration"; and with 24 CFR part 570.503(b)(7), "Reversion of Assets".

m. In the event that CITY cannot or fails to utilize the subject improvements for the purpose described herein throughout the Change in Use Restriction Period, CITY shall immediately notify COUNTY regarding CITY's proposed new use of the subject improvements. COUNTY shall review the Grant eligibility and national objective compliance of the proposed new use of the subject improvements prior to CITY and COUNTY performing any of the following steps listed in this section. COUNTY will communicate in writing to CITY its determination in this matter. After COUNTY has made its determination, and if directed by COUNTY, CITY shall conduct a public hearing to provide affected citizens an opportunity to comment on CITY's proposed new use of the subject improvements. After these steps have been completed, COUNTY, at its option, may require that CITY comply with one of the following:

(1) Reimburse COUNTY in an amount equal to the Grant funds expended for this Project/Activity or its "proportionate share" of the current "Fair Market Value" (as defined by the California Code of Civil Procedure, Part 3, Title 7, Chapter 9, Article 4, Section 1263.320) of all real property and/or improvements for which Grant assistance was provided pursuant to this Agreement, whichever is more. "Proportionate share" is that amount equivalent to COUNTY's percentage contribution toward the total acquisition, design, construction or other cost(s) of the Project/Activity, as described in **Schedule "A"** of this Agreement, or

(2) Offer the improvements for which Grant funds were expended pursuant to this Agreement for sale at "Fair Market Value" and, subsequent to sale, reimburse COUNTY for its "proportionate share" of the sales price.

PARTIES shall first use good faith efforts in an attempt to agree on the "Fair Market Value". If, however, PARTIES are unable to agree, they shall, within thirty (30) days from and after written request given by either party to the other, select an arbitrator mutually acceptable to both PARTIES. The arbitrator shall render an advisory decision as to the "Fair Market Value" of the real property and/or improvements referenced in this Agreement. The arbitrator's decision in this matter shall be nonbinding and advisory only; provided, however, that PARTIES shall, in good faith, give serious consideration to the arbitrator's decision.

If PARTIES are unable to agree with a single arbitrator within the above-referenced thirty (30) days, then each shall, within twenty (20) additional working days, appoint one (1) arbitrator and the two (2) arbitrators shall select a third arbitrator within ten (10) additional working days after both are selected. Any decision as to the "Fair Market Value" determined and jointly agreed upon by any two (2) of the three (3) arbitrators shall be nonbinding and advisory only; provided, however, that PARTIES shall each give good faith and serious consideration to the arbitrators' decision.

All arbitrators shall be real estate appraisers who have at least ten (10) years experience in appraising real estate in the State of California and must be either a member of the American Institute of Real Estate Appraisers, holding an M.A.I. (Member of Appraisal Institute)

designation, or a member of the Society of Real Estate Appraisers, holding an S.R.P.A. (Senior Real Property Appraiser), or an S.R.E.A. (Society of Real Estate Analysts) designation. PARTIES shall each pay half of the fees and necessary expenses for the arbitrators.

In no event shall the amount reimbursed to COUNTY be less than COUNTY's total contribution toward the Project/Activity. The Change in Use Restriction, as stated herein, shall be in effect for that period defined in Paragraph 1.f. of this Agreement.

4. COUNTY's Obligations

a. Any regulation enacted by COUNTY to facilitate the administration of the Grant will be made available to CITY by County's Board of Supervisors or its designee.

b. COUNTY shall make available to CITY, at its written request, copies of the terms of the Grant.

c. COUNTY shall cooperate fully with CITY in undertaking this Project/Activity and process CITY invoices for payment under this Agreement with due diligence.

d. COUNTY shall make available to CITY a copy of the notice which CITY may use in soliciting small and Section 3 business participation in the Grant funded work contemplated by this Agreement.

e. COUNTY shall review plans and specifications submitted by CITY and shall provide comments and approval or disapproval.

5. Laws and Regulations

a. CITY agrees to comply with the provisions of the Act, any amendments thereto, the federal regulations and guidelines now or hereafter enacted pursuant to the Act, terms of the Grant to COUNTY now or hereafter in effect, and the regulations now or hereafter enacted by COUNTY to facilitate its administration of the Grant in Kern County, or any other statute, regulation or guideline applicable to the Program. CITY shall become familiar with the applicable statutes, regulations and guidelines governing the Grant program, each of which is made a part hereof and incorporated herein by this reference as if set forth in full.

b. It is agreed that all provisions of State of California law applicable to public contracts (except to the extent California law may be waived and is waived by the PARTIES) are a part of this Agreement to the same extent as if set forth herein in full and shall be complied with by CITY under this Agreement and any related agreements.

6. Records and Administration

a. In the event CITY expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal financial assistance in any single fiscal year, from all sources combined, it shall arrange at its own expense for performance of a "Single Audit" of its entire operation by an independent auditor. Such audit shall comply with the requirements and standards of OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations", including appendices; Pub. L. 98-502, "Single Audit Act of 1984", as amended;



2 CFR part 200.425, "Audit Services"; and OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments"; all of which are incorporated herein by this reference as if set forth in full.

The results of the audit must be submitted to COUNTY within thirty (30) days of completion. Acceptance of CITY's audit reports by COUNTY does not prohibit COUNTY from performing any additional audit work required to follow up on findings, as deemed necessary by COUNTY, or as necessary for COUNTY to comply with any administrative or audit requirements imposed by the federal or state government.

b. As a condition of receiving federal financial assistance under this Agreement, CITY agrees to comply with 2 CFR part 200.336, "Access to Records". It is further agreed by CITY that any agreement between CITY and its independent auditor shall provide for access during normal business hours to the independent auditor's work papers by federal, state and COUNTY auditors, or their authorized agents, as may be deemed necessary to carry out their audit responsibilities. The audit agreement must also require CITY's independent auditor to retain for review purposes said audit work papers for a minimum of five (5) years from date of audit completion or until all related audit issues are resolved, whichever should occur later.

c. CITY agrees to maintain a financial management system which complies with 2 CFR part 200.302, "Financial Management", except paragraph (a). Particular reports and records that may be applicable to this Project/Activity and require compliance by CITY are described in and attached hereto as **Exhibit "D"**, and are incorporated herein by this reference as if set forth in full.

d. CITY agrees to comply with the methods and procedures for payment as outlined in 2 CFR part 200.305, "Payment", except as modified by 24 CFR part 570.513, "Lump Sum Drawdown for Financing of Property Rehabilitation Activities".

e. CITY agrees to comply with the standards and requirements of 2 CFR part 200.314, "Supplies", and 2 CFR part 200.313, "Equipment", with the exception that in all cases in which the equipment is sold, the proceeds shall be considered to be Program Income and be immediately refundable to COUNTY.

f. CITY agrees to comply with the requirements and standards of 2 CFR part 200.213, "Procurement Standards", except paragraph (a), and 2 CFR part 200.420, "Consideration for Selected Items of Cost".

g. CITY agrees to comply with the standards and requirements of 2 CFR part 200.213, "Suspension and Debarment", and 2 CFR part 200.328, "Monitoring and Reporting Program Performance", except paragraphs (b) through (d) and paragraph (f) thereof. CITY further agrees that COUNTY has the right to monitor and supervise the administration and/or implementation of the Project/Activity to be completed pursuant to this Agreement to help ensure compliance with the requirements of the Act as now or hereinafter amended, the federal regulations as now or hereinafter promulgated pursuant to the Act, or guidelines developed by the federal government for administering and/or implementing the Project/Activity, or any other statute, rule, regulation or guideline applicable to the administration and/or implementation of the Grant program.



h. CITY agrees to comply with the standards and requirements of 2 CFR part 200.339, "Remedies for Noncompliance", and 2 CFR part 200.339, "Termination". CITY also agrees that COUNTY can, by unilateral action, terminate this Agreement, with cause, by giving ten (10) days prior written notice to CITY. In the event COUNTY determines that an intentionally false or fraudulent certified claim has or is being filed, COUNTY, in its sole discretion, may immediately terminate this Agreement and/or CITY shall reimburse COUNTY for any and all funds found to be improperly paid, as well as those reasonable costs associated with the investigation and recovery of the contested claims and/or amounts.

i. CITY shall be accountable to COUNTY for any and all Grant funds expended by CITY or any officer, employee, agent or representative thereof, whether or not such officer, employee, agent or representative thereof was acting within the scope of his employment. CITY shall repay COUNTY the full amount of any improperly expended Grant funds upon demand and shall comply with the requirements of 2 CFR part 200.344, "Adjustments and Continuing Responsibilities". COUNTY may retain any funds of CITY in COUNTY's possession as an offset against the debt resulting from such improper expenditure.

j. CITY agrees to comply with the standards and requirements of 2 CFR part 200.345, "Collection of Amounts Due".

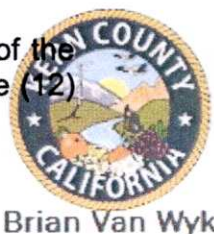
k. CITY shall return to COUNTY, within thirty (30) days at the end of the program year in June, all Program Income which is directly generated by Grant funded activities during the Change in Use Restriction Period.

l. At COUNTY's sole option, COUNTY may either terminate this Agreement upon three (3) days written notice to CITY or withhold funds from the Project/Activity if CITY is not complying with provisions of the Act, federal regulations thereunder, terms of the Grant from the federal government to COUNTY, the regulations of COUNTY to facilitate the administration of the Grant, the terms of this Agreement, or any other statute or regulation applicable to the Program or administration thereof as determined solely by COUNTY. Should COUNTY become subject to any claims, causes of action, costs or sanctions due to any failure by CITY or CITY's agent to comply with all applicable federal, state, and local laws and regulations, CITY hereby agrees to be solely liable for any such expenses, costs, damages and sanctions and shall fully reimburse, hold harmless, and indemnify COUNTY for any payments made or funding lost by COUNTY and COUNTY's expenses related thereto, including COUNTY's costs.

7. Use Restriction Monitoring

Beginning approximately one year after the date of the filing of the Notice of Completion and resolution of all monitoring findings, CITY shall provide COUNTY a Monitoring Letter regarding the physical condition and usage of the improvements constructed with Grant funds pursuant to this Agreement for the purpose of determining compliance with the change in use restrictions during the period defined in Paragraph 1. f. herein. The purpose of the Monitoring Letter is to ensure that the Grant funded improvements continue to be properly maintained and utilized for their original eligible use or for another Grant use approved by COUNTY in accordance with applicable regulations found at 24 CFR Part 570.201.

Monitoring Letter shall consist of a written description of the physical condition of the improvements; any maintenance performed on the improvements during the past twelve (12)



months; and any proposed changes in the future use of the improvements. Said Monitoring Letter shall be signed by the City Manager/Administrator or his/her designee. CITY shall submit the Monitoring Letter to COUNTY by no later than June 30 of each year. COUNTY may elect to conduct a visual inspection of the improvements and shall notify CITY at least two (2) weeks in advance of each monitoring visit.

A determination regarding continued compliance and/or any related findings, conditions or sanctions shall be made and communicated in writing to CITY by COUNTY following review of the annual monitoring letter or each monitoring visit.

8. Use of Debarred, Suspended or Ineligible Contractors or Subrecipients

Assistance provided under this Agreement shall not be used directly or indirectly to employ, award contracts, or otherwise engage the services of, or fund any contract or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 2 CFR part 180.

9. Political Activity

CITY agrees that no Grant funds shall be expended to finance any political activity in contravention of the Hatch Act of 1939, as amended, 5 U.S.C. 15 et seq.

10. Prohibited Use of Federal Funds for Lobbying

CITY certifies, to the best of its knowledge and belief, that no federally appropriated funds have been paid or will be paid, by or on behalf of CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds, other than federally 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, CITY shall complete and submit, in accordance with its instructions, Standard Form-LLL, "Disclosure of Lobbying Activities", attached hereto as **Exhibit "E"** and incorporated herein as if set forth in full.

CITY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under any federal grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

11. Use of Grant Funds for Religious Purpose

CITY agrees that no Grant funds shall be expended for the design, construction, operation, or maintenance of any facility used for inherently religious activities.



12. Prohibited Interest of Officials and Employees

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. No member, officer or employee of CITY, or its designees or agents, no member of the Board of Supervisors of COUNTY or any other public official who exercises any functions or responsibilities with respect to the Program during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. CITY shall incorporate or cause to be incorporated, in all contracts or subcontracts, relating in any manner to this Agreement, a provision prohibiting such interest.

The PARTIES to this Agreement have read and are aware of the provisions of section 1090 et seq. and section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All PARTIES hereto agree that they are unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, COUNTY may immediately terminate this Agreement by giving written notice thereof. CITY shall comply with the requirements of Government Code, section 87100 et seq., during the term of this Agreement.

13. Federal Labor Standards and State Labor Code Provisions

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, CITY and all contractors engaged under contracts for the construction, alteration, and/or repair of any building or work financed in whole or in part with federal funds provided under this Agreement, shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the U. S. Department of Labor under 29 CFR parts 3 and 5, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve CITY of its obligation to require payment of higher rates. Further, if the requirements of HUD and of the State of California are different in regards to matters including, but not limited to, hours of labor, payroll records, apprentices, workers' compensation, and suits to recover penalties and forfeitures, CITY shall comply with the more restrictive provision.

CITY shall cause or require to be inserted in full, in all such contracts subject to such regulations, the "Federal Labor Standards Provisions" clause, or any modification thereof, set out in **Exhibit "F"** attached hereto and incorporated herein by this reference as if set out in full. CITY shall comply with the procedures set out in HUD Handbook 1344.1, "Federal Labor Standards Compliance in Housing and Community Development Programs", as amended, which is incorporated herein by this reference as if set forth in full.

CITY shall also cause or require to be inserted in full, in all contracts subject to State Labor Code regulations, the "State of California Labor Code Requirements" clause, or any modification thereof, set out in **Exhibit "G"** attached hereto and incorporated herein by this reference as if set out in full.



No awards of contracts covered under this section of this Agreement shall be made to any contractor who is ineligible under the provisions of any applicable regulations of the U. S. Department of Labor and/or the State of California Department of Industrial Relations – Division of Labor Standards Enforcement to receive an award of such contract.

14. Nondiscrimination Requirements

CITY is subject to all applicable requirements of the following Acts, promulgations and regulations with respect thereto:

a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and the regulations issued pursuant thereto (24 CFR part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. Where the federal financial assistance is to provide or is in the form of personal property or real property interest therein or structures thereon, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, via the instrument effecting any disposition by the applicant or transferee, in the case of a subsequent transfer, of such real property, structures or improvements thereon, or interests therein, to require a covenant running with the land assuring nondiscrimination for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the applicant retains ownership or possession of the property, whichever is longer. Under this assurance the United States shall have the right to seek its judicial enforcement. CITY is required to take all measures necessary to effectuate this Title in the manner set forth in Section 1.5 of the above-mentioned regulation, a copy of which is attached hereto as **Exhibit "H"** and incorporated herein by this reference as if set forth in full.

b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and requiring action to affirmatively further fair housing in the sale, lease or rental of housing, the financing of housing, and the provision of brokerage services within COUNTY's jurisdiction.

c. Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR part 570.602), which provide that no person in the United States shall on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Title I funds.

d. Executive Order 11063, as amended, and the regulations issued pursuant thereto (24 CFR part 107) which require that all action necessary and appropriate be taken to prevent discrimination because of race, color, religion (creed), sex, or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the federal government, or provided with federal assistance by HUD, and in the lending practices with

respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by HUD.

15. Equal Employment Opportunity

During the implementation of this Project/Activity and during subsequent operation of any facility assisted pursuant to this Agreement, CITY shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CITY shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and the selection for training, including apprenticeship. CITY shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by COUNTY and/or HUD setting forth the provisions of this nondiscrimination clause. CITY shall state, through such nondiscrimination clause, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Government contracts. Except as otherwise provided for in Parts II, III and IV of Executive Order 11246, dated September 24, 1965, as amended, and in attendant Code of Federal Regulation provisions, CITY shall require to be included in each U. S. Government contract entered into by CITY and modification thereof if not included in the original contract, the "Equal Opportunity" clause contained in Section 202 of Executive Order 11246 (48 CFR part 52.222 - 26), as amended, and set out in **Exhibit "I"**, attached hereto and incorporated herein by this reference as if set forth in full.

CITY agrees that it shall assist and cooperate actively with COUNTY, HUD, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish COUNTY, HUD and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist COUNTY and HUD in the discharge of their primary responsibilities for securing compliance.

CITY agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, CITY agrees that if it fails or refuses to comply with these undertakings, HUD may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this Grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to CITY under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such; and refer the case to the Department of Justice for appropriate legal proceedings.

16. "Section 3" Compliance in the Provision of Training, Employment, and Business Opportunities for Lower-Income Persons



CITY is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, the HUD regulations issued pursuant thereto at 24 CFR part 135, and any applicable rules and orders of HUD issued thereunder. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects/Activities covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

CITY shall cause or require to be inserted in full in all contracts and subcontracts for work financed, in whole or in part, with assistance provided under this Agreement, the Section 3 clause entitled, "Economic Opportunities for Low- and Very Low-Income Persons", and set forth in **Exhibit "J"**, attached hereto and incorporated herein by this reference as if set forth in full.

CITY itself, during its implementation of this Project/Activity shall, to the greatest extent feasible, seek out and attempt to award contracts to Section 3 business concerns for the business opportunities generated on this federally funded Project/Activity.

CITY shall provide such copies of 24 CFR part 135 as may be necessary for the information of the parties to contracts required to contain the Section 3 clause.

17. Small Business Concerns

CITY is subject to the requirements of the Small Business Act (15 USC 631 et seq.), as amended, the HUD applicable regulations issued pursuant thereto at 48 CFR, part 19, and any applicable rules and orders of HUD issued thereunder requiring aid, counseling, assistance, and protection, insofar as possible, with, for, or of the interests of small business concerns in order to preserve free competitive enterprise; and placement with small business concerns of a fair proportion of the total federally funded purchases and contracts for property and services.

CITY shall implement the specific small business policies herein below stated in order to further applicable requirements of the Small Business Act:

a. Small business concerns shall be afforded an equal opportunity to compete for prime contracts and subcontracts. The "Utilization of Small Business Concerns" clause (48 CFR part 52.219-8) set forth in **Exhibit "K"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included by CITY in all contracts in connection with this Project/Activity in amounts which may exceed the simplified acquisition threshold, currently set at ONE HUNDRED THOUSAND DOLLARS (\$100,000) except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, and (ii) contracts for services which are personal in nature. The "Small Business Subcontracting Plan" clause (48 CFR part 52.219-9) set forth in **Exhibit "L"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included by CITY in all contracts in connection with this Project/Activity which may exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) and which, in the opinion of COUNTY, offer substantial subcontracting possibilities.

b. Bidders' mailing lists shall include established and potential qualified small business concerns.

c. Invitations for bids or requests for proposals shall be sent to all firms on the appropriate mailing list except that where use of less than a complete list is appropriate a pro rata number of small business concerns shall be solicited.

d. Proposed procurements and contract awards shall be publicized in accordance with these policies.

e. Procurement of property and services shall be divided into reasonably small lots (not less than economic production runs) in order to permit bidding on quantities less than the total requirements.

f. The maximum amount of time practical shall be allowed for preparation and submission of bids and proposals.

g. Delivery schedules shall be established on a realistic basis which will encourage small business participation to the extent consistent with the actual requirements of the Small Business Act.

h. Applicable specifications, plans, and drawings either shall be furnished with invitations for bids and requests for proposals or, when not so furnished, information as to locations where they may be obtained or examined shall be furnished.

i. In the event of equal low bids, awards shall be in accordance with 48 CFR part 14.408-6, "Equal Low Bids".

j. Subcontracting to enroll small business concerns shall be encouraged.

k. Placement of small purchases (amounts under TWENTY FIVE THOUSAND DOLLARS [\$25,000]) with small business concerns shall be encouraged.

l. Small business concerns seeking Federal contracts, but found to lack qualifications as prime contractors, should be referred to COUNTY and the Small Business Administration for assistance as may be appropriate.

m. Offers from small business concerns otherwise qualified to perform specific federal contracts but ineligible under Walsh-Healey Public Contract Act, 41 USC 35 et seq., shall be referred to COUNTY and Small Business Administration for possible certification of eligibility to receive and perform the contract.

n. To the extent practicable, work to be performed which exceeds the maximum amount of any contract for which a surety may be guaranteed against loss shall be placed so that more than one small business concern may perform the work.

o. A small business concern otherwise qualified to receive and perform specific federal contracts but determined to be non-responsible may be certified to be competent by the Small Business Administration under the provisions of the Small Business Act.



48 CFR part 52.222-36, attached hereto as **Exhibit "O"** and incorporated herein by this reference as if set forth in full.

21. Americans with Disabilities Act of 1990

Grant subgrantees and subrecipients agree to abide by the requirements of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, and any regulations issued pursuant thereto, which prohibits, at Title I thereof, discrimination by any employer, employment agency, or labor organization against any qualified individual with a disability in regard to any term, condition, or privilege of employment; makes applicable, at Title II thereof, the prohibition against discrimination on the basis of disability to all programs, activities and services provided or made available by state and local agencies or instrumentalities or agencies thereof, or by public entities that provide public transportation; prohibits, at Title III thereof, discrimination against disabled persons by privately operated public accommodations and in public transportation services provided by private entities; and which, at Titles IV and V thereof, makes further provisions against discrimination against disabled persons.

22. Architectural Barriers Act of 1968

CITY is subject to the requirements of the Architectural Barriers Act of 1968, 42 USC 4151 - 4157 (Uniform Federal Accessibility Standards (UFAS)), and the regulations issued pursuant thereto (41 CFR part 102-76.25(b)), which require, except as otherwise provided, that all new construction and major renovations, provide full access to and use of Federally-controlled facilities for physically impaired persons as required by the UFAS or the ADA Accessibility Guidelines, whichever is more stringent. Minor renovations in existing buildings shall meet minimum UFAS requirements. A more detailed explanation of these standards can be found in 36 CFR parts 1190 and 1191. CITY shall be responsible for compliance with the requirements of the Act during the design and construction and for the life of any improvements to be constructed as part of the Project/Activity, as defined herein. COUNTY shall have the right, at all reasonable times, to review construction plans and conduct inspections of the Project/Activity to determine if CITY is complying with these specifications.

23. Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans

CITY shall comply with 48 CFR part 22.13 et seq., and shall take affirmative action to employ, advance in employment and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran's status. In all contracts or agreements of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) or more relating to this Agreement, CITY shall include or cause to be included the "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" and the "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" clauses set out in **Exhibit "P"**, attached hereto and incorporated herein by this reference as if set forth in full.

24. Environmental Considerations

In order to assure that the policies of the National Environmental Policy Act of 1969 ("NEPA"), as amended, and the California Environmental Quality Act of 1970 ("CEQA"), as



To facilitate the participation of small businesses in CDBG funded contracts, PLNR has developed a Small Business Affirmative Action Plan designed to carry out the procurement standards found at 2 CFR 200.321. A copy of the Plan is available upon request from COUNTY Planning and Natural Resources Department.

CITY agrees that the "Small Business Participation Requirements" clause set forth in **Exhibit "M"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included in all contracts in connection with this Project/Activity for goods, services, and construction involving CDBG funding of more than the simplified acquisition threshold fixed at 41 U.S.C. 403 (11) (currently set at \$100,000).

CITY further agrees that the "Small Business Subcontracting Program" clause set forth in **Exhibit "N"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included in all contracts in connection with this Project/Activity which may exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) and should be included in all contracts which may not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) but which, in the opinion of COUNTY and HUD, offer substantial subcontracting possibilities.

18. Nondiscrimination on the Basis of Age

CITY is subject to the Age Discrimination Act of 1975, as amended, (Title III, Pub. L. 94-135) and attendant regulations at 24 CFR part 146, which prohibits, except as otherwise provided, that any person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. CITY is also subject to the Age Discrimination in Employment Act of 1967 addressing age discrimination in employment for persons between the ages of forty (40) and seventy (70) years.

19. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

COUNTY and CITY will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as required under 24 CFR part 570.606(b) and Department of Transportation implementing regulations at 49 CFR part 24; the requirements in 24 CFR part 570.606(c) governing the residential anti-displacement and relocation assistance plan under Section 104(d) of the Housing and Community Development Act of 1974 (Act) and displacement under Section 104(k) of the Act, and HUD implementing regulations at 24 CFR Part 42; and COUNTY may, at COUNTY's option, comply with the relocation requirements of 24 CFR part 570.606(d) governing optional relocation assistance under Section 105(a)(11) of the Act.

20. Rehabilitation Act of 1973 and Nondiscrimination Based on Handicap

CITY is subject to the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended (29 USC 793 and 29 USC 794, respectively) and attendant regulation at 24 CFR 570.602, which provide that no otherwise qualified individual with handicaps shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving federal financial assistance. CITY shall cause or require to be inserted in full, in all such contracts subject to such regulations, the clauses, or any modifications thereof, set out in



amended, are most effectively implemented, COUNTY shall comply with HUD Environmental Review Procedures (24 CFR part 58) leading to environmental clearance for particular projects/activities, and the CEQA review procedures (Title 14, Section 15000 et seq. of the California Code of Regulations) in connection with this Project/Activity. In order to assure that the policies of NEPA and CEQA are carried out, CITY shall be responsible for complying with all conditions/mitigation measures specified during the environmental review process, all as more fully described in **Schedule "A"** attached hereto.

25. Lead Based Paint

CITY is subject to the prohibition against the use of lead-based paint. Section 401(b) of the Lead-Based Paint Poisoning Prevention Act directs the prohibition of the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance. Such prohibitions are contained in 24 CFR part 35.135, and are applicable to residential structures constructed or rehabilitated with the assistance of Grant funds.

26. Historic Preservation

CITY must take into account the effects of a project on any prehistoric or historic district, site, building, structure, or object listed in, or eligible for inclusion in, the National Register of Historic Places maintained by the National Park Service of the U. S. Department of the Interior. The National Register "Criteria for Evaluation" (36 CFR part 60.4) was established by the Secretary of the Interior, CITY shall make every effort to avoid, minimize, or mitigate any adverse effects on historic properties. Activities affecting such properties must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 USC 470f), Pub. L. 89-665; Executive Order 11593, Protection and Enhancement of the Cultural Environment (May 13, 1971); the Advisory Council on Historic Preservation (26 CFR part 800); and Section 3 of the Reservoir Salvage Act of 1960, (Pub. L. 86-523), as amended by the Archaeological and Historic Preservation Act of 1974, (Pub. L. 93-291), (16 USC 469a-1), and their attendant implementing regulations.

27. Compliance with Clean Air and Water Acts

CITY is subject to the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., including the regulations of the Environmental Protection Agency at 40 CFR parts 6, 51, and 93; the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 et seq., and later enactments; and Executive Order 11738 dated September 10, 1973. CITY, also, agrees to comply with Executive Order 12088, relating to the prevention, control, and abatement of water pollution.

In no event shall any amount of assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

28. Flood Disaster Protection

CITY is subject to the requirements of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which prohibits Federal financial assistance for acquisition or construction purposes, as defined under Section 3(a) of said act, for Projects/Activities within special hazard areas.

previously identified, ("Identified Area"), by the Director of the Federal Emergency Management Agency ("FEMA"), unless the Identified Area is in a community participating in the national flood insurance program and subject to the mandatory purchase of flood insurance requirements of said act. The PARTIES to this Agreement agree that the Project described in **Schedule "A"**, attached hereto, is not located in an Identified Area.

Any contract for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Director of FEMA as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 USC 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

In its compliance with the Flood Disaster Protection requirements of this Agreement, COUNTY hereby agrees to comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards.

29. Indemnification

CITY agrees to indemnify, defend, and hold harmless COUNTY and its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, expert fees, fees of County Counsel, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of CITY or CITY's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of COUNTY; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of CITY by any person or entity.

CITY acknowledges that CITY, and all contractors hired by CITY to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). CITY is and shall remain in compliance with the IRCA and shall ensure that only contractors hired by CITY to perform services under this Agreement are in compliance with the IRCA. In addition, CITY agrees to indemnify, defend, and hold harmless the County, its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any liability, damages or causes of action arising out of or relating to any claims that CITY's employees or the employees of any contractor hired by CITY, are not authorized to work in the United States for CITY or its contractor and/or any other claims based upon alleged IRCA violations committed by CITY or its contractor(s).

30. Insurance



CITY in order to protect COUNTY and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of CITY's actions in connection with the performance of CITY's obligations, as required in this Agreement, shall secure and maintain insurance as described below. CITY shall not perform any work under this Agreement until CITY has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the COUNTY's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, CITY shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. The CITY shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. CITY shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by CITY or COUNTY as an additional insured.

a. **Workers' Compensation and Employers' Liability Insurance Requirement** - In the event CITY has employees who may perform any services pursuant to this Agreement, CITY shall submit written proof that CITY is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

CITY shall require any contractor or sub-contractor to provide workers' compensation for all of the contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by the insurance afforded by CITY. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code section 3700, CITY shall provide and/or require each contractor or sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

CITY shall also maintain employers' liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

b. **Liability Insurance Requirements:**

(1) CITY shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) **Commercial General Liability Insurance** including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of CITY's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. CITY shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy

limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

- (b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.
- (2) The Commercial General Liability and Automobile liability Insurance required herein shall include an endorsement naming the COUNTY and COUNTY's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
- (3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to COUNTY and must be approved by the COUNTY Risk Manager.
- (4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, CITY at its option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. Upon acquisition of the Property (or if there are no improvements on the Property, upon completion of construction of any improvements) CITY shall maintain Fire and Extended Coverage Insurance on a blanket basis or with an agreed amount clause in amounts not less than 100% of the replacement value for all improvements.

d. Cancellation of Insurance — The above stated insurance coverages required to be maintained by CITY shall be maintained until the completion of all of CITY's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the CITY must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. CITY shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

e. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-; VII" rating. Any exception to these requirements must be approved by the COUNTY Risk Manager.



f. If CITY is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, CITY shall provide coverage equivalent to the insurance coverages and endorsements required above. COUNTY will not accept such coverage unless COUNTY determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by CITY is equivalent to the above-required coverages.

g. All insurance afforded by CITY pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by COUNTY. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the COUNTY.

h. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve CITY for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

i. Failure by CITY to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by CITY. COUNTY, at its sole option, may terminate this Agreement and obtain damages from CITY resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CITY, COUNTY shall deduct from sums due to CITY any premiums and associated costs advanced or paid by COUNTY for such insurance. If the balance of monies obligated to CITY pursuant to this Agreement is insufficient to reimburse COUNTY for the premiums and any associated costs, CITY agrees to reimburse COUNTY for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by COUNTY to take this alternative action shall not relieve CITY of its obligation to obtain and maintain the insurance coverages required by this Agreement.

j. Subcontractor Requirements

- (1) If CITY hires a consultant to provide professional services, such as architectural or engineering services under this Agreement, CITY shall require its consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (2) During the construction of the Activity, CITY shall require that all contractors hired by CITY to perform work on the Activity Premises maintain the following insurance coverages at all times during the performance of said work:
 - (a) Commercial General Liability Insurance including Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.



- (b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles, with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.

31. Captions and Interpretation

Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

The Recitals listed at the beginning of this Agreement are hereby incorporated into this Agreement.

No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

32. Successors and Assigns of COUNTY

This Agreement shall be binding upon and inure to the benefit of the successors to or assigns of COUNTY.

33. Liens and Encumbrances

Without the prior consent of COUNTY, CITY shall not transfer, pledge, hypothecate, or encumber the Project/Activity property during the Change in Use Restriction Period.

34. Assignment and Subletting

CITY shall not assign any right, title or interest it may acquire by reason of this Agreement nor sublet any Project/Activity premises except upon first obtaining the written consent of COUNTY.

35. Concurrent Remedy

No right or remedy herein conferred on or reserved to COUNTY is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

36. Non Waiver

No covenant or condition of this Agreement to be performed by CITY can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by CITY. A waiver of one covenant or condition by COUNTY does not grant or imply a waiver of any other covenant or condition to be performed by CITY. COUNTY shall be entitled to



invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

37. Incorporation of Prior Agreements and Amendments

This Agreement, including all attachments hereto and any reference to pertinent federal or State laws and regulations, contains the entire Agreement between the PARTIES, relating to the services, rights, obligations and covenants contained herein and assumed by the PARTIES respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect. This Agreement may be modified in writing only, signed by the PARTIES in interest at the time of modification.

38. Severability

Should any part, term, portion or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the PARTIES intended to enter into in the first instance.

39. Signatory Authority

Each individual executing this Agreement on behalf of each party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. CITY shall, prior to Agreement execution by COUNTY's Board of Supervisors, deliver to COUNTY a copy of the resolution or minute order of CITY's governing body authorizing the execution of this Agreement.

40. Procedure to Modify and Limitation of Term of Agreement

a. Except as otherwise provided herein, the terms of this Agreement may only be modified by the written consent of the PARTIES hereto.

b. The expiration of this Agreement shall be determined as provided in Paragraph 1.g. of this Agreement.

41. Execution

This Agreement is effective upon the date indicated herein above. It is the product of negotiation and all PARTIES are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

42. Notices



Notices shall be sufficiently given hereunder if personally served upon the Clerk of the Board of Supervisors of the COUNTY or the Clerk of the CITY, or if sent by United States mail, postage prepaid, as follows:

directed to COUNTY, addressed to:

Clerk of the Board of Supervisors
County Administrative Center
1115 Truxtun Avenue, Fifth Floor
Bakersfield, California 93301

or directed to CITY, addressed to:

City Manager
City of Wasco
764 E Street
Wasco, California 93280

43. Construed According to California Law

The provisions of this Agreement shall be construed in accordance with the laws of the State of California.

44. Venue

This Agreement has been entered into and is to be performed in the County of Kern, California. Accordingly, the PARTIES agree that the venue of any action relating to this Agreement shall be in the County of Kern.

45. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, discretion, option, or determination of either COUNTY or CITY, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, discretion, option, or determination to be arbitrary, capricious, or unreasonable.

46. No Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to COUNTY and CITY. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COUNTY and



CITY that any such person or entity, other than COUNTY and CITY, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their respective officers and agents hereunto duly authorized as of the day and year first above written.

APPROVED AS TO CONTENT:
Planning and Natural Resources Department

COUNTY OF KERN

BY _____
Lorelei H. Oviatt, AICP, Director

BY _____
Chairman, Board of Supervisors

Printed Name

"COUNTY"

APPROVED AS TO FORM:
Office of County Counsel

CITY OF WASCO

BY _____
Brian Van Wyk, Deputy

BY _____

Printed Name

Insert Title

"CITY"

R:\PLANNING\Bell\Wasco 16th street\Wasco 16th Street Agreement.doc

Title

CD Activity # 21.20.1 – City of Wasco 16th Street Rehabilitation Project

Project Purpose

This Project is intended for the rehabilitation and construction of 16th Street, between Griffith Avenue and Highway 43, to include existing pavement grinding and removal, repaving, sawcut, rehabilitation of sections of curb and gutter which no longer allow proper drainage flow, replace pavement markings, install new ADA curb ramps and related improvements in the area for residents of the low-income community.

Project Description

The design, rehabilitation and construction of 16th Street, between Griffith Avenue and Highway 43, to include existing pavement grinding and removal, repaving, sawcut, rehabilitation of sections of curb and gutter which no longer allow proper drainage flow, replace pavement markings, install new ADA curb ramps and related improvements.

Activity Description

The Project may include the following activities: design, rehabilitation and construction of 16th Street, between Griffith Avenue and Highway 43, to include existing pavement grinding and removal, repaving, sawcut, rehabilitation of sections of curb and gutter which no longer allow proper drainage flow, replace pavement markings, install new ADA curb ramps and related improvements.

Project Cost Estimate

The total amount of GRANT funds committed by the County of Kern ("County" or "COUNTY") to the Project is THREE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED NINETY-FOUR DOLLARS (\$314,794). Individual line items and payment responsibilities within the following detailed cost estimate for GRANT funds may be modified under authority of the County's Planning and Natural Resources ("PLNR") Director provided that the total amount of GRANT funds committed does not exceed THREE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED NINETY-FOUR DOLLARS (\$314,794). In addition, CITY shall be responsible for all other costs related to this Project in excess of the GRANT amount and pursuant to the Agreement.

Construction	COUNTY GRANT Funds CD Activity #20.18.1	CITY AND Other Funds	TOTAL
Grind & haul 3 inches existing asphalt concrete	\$18,500	\$0	\$18,500
Grade & proof roll existing subgrade	\$7,500	\$0	\$7,500
Asphalt paving 3 inches	\$128,250	\$0	\$128,250
Remove & replace cross gutter	\$12,000	\$0	\$12,000
Remove & replace curb & gutter	\$1,750	\$0	\$1,750
Remove & replace ADA ramp	\$90,000	\$0	\$90,000
Sawcut	\$1,500	\$0	\$1,500
Adjust valve cover to grade	\$6,000	\$0	\$6,000
Adjust manhole cover to grade	\$14,400	\$0	\$14,400

Construction	COUNTY GRANT Funds CD Activity #20.18.1	CITY AND Other Funds	TOTAL
Striping	\$2,500	\$0	\$2,500
Post-construction survey	\$0	\$2,500	2,500
Sch A Construction Total	\$282,400	\$2,500	\$284,900
Design/Other Costs	\$0	\$28,490	\$28,490
Advertisement	\$0	\$1,500	\$1,500
Construction Inspection (15% of construction cost)	\$0	\$42,735	\$42,735
Contract Administration/HUD Monitoring (5% of construction cost)	\$0	\$14,245	\$14,245
Contingency (10% of construction cost)	\$0	\$30,190	\$30,190
Escalation (6% of construction cost)	\$15,394	\$0	\$15,394
Project Delivery Cost (Planning and Natural Resources Department - CD Costs)	\$17,000	\$0	\$17,000
Total Project Costs	\$314,794	\$119,660	\$434,454

Other Provisions

The following provisions apply to this Activity: 1) For the reimbursement of CITY staff overhead costs (at CITY's option), CITY will submit to COUNTY a cost allocation plan pursuant to OMB Circular A-87 for Community Development Division review and approval.

Beneficiaries

This Project is eligible for grant funding pursuant to 24 CFR Part 570, Subpart C, Section 570.208(a)(1)(i) – Activities to benefit residents of a low to moderate income area. The project qualifies on an area-wide basis and will benefit 2,310 residents 65.37% of whom have low to moderate incomes (HUD 2019 LMISD).

Anticipated Implementation Schedule

It is agreed between the COUNTY and CITY that time is of the essence in the implementation of the Activity described in this Agreement. CITY shall implement the Project in an expeditious manner.

Environmental Clearance: The project activities were found to be exempt from NEPA and an environmental clearance and the transmittal of Request for Release of Funds to HUD was authorized by the Board on _____. An Authority to Use Grant Funds was issued for the Project by HUD on _____.

National Environmental Policy Act (NEPA)

As to the environmental review and applicability of Section 24 CFR 58.47 for CD Activity No. 21.20.1, the review is maintained in the associated Planning and Natural Resources Department – Community Development Division Project file. It contains:

1. 24 CFR Part 58 Environmental Review;
2. Environmental Determination (CEST) cannot convert to exempt and Request for Release of Funds Documentation including Board of Supervisors action to request project funds; and

3. Authority to Use Grant Funds issued by HUD.

Mitigation Measures/Project Conditions

The following mitigation measures and/or conditions, included as part of the original review and hereby incorporated into the current Project Plans and Specifications and are to be complied with, as required, pursuant to the completed "Worksheet A". The CITY shall be responsible for notification of the COUNTY should any subsequent project modifications proposed affect the environmental clearance for the project.

1. In accordance with the Habitat Conservation Plan Habitat Fees and/or other conditions may apply to the project.

No more than 14 to 30 days prior to the commencement of operations or ground disturbing activities, as authorized by this environmental review, the project developer shall ensure that a preconstruction survey, is performed by a qualified biologist, to ensure that no special-status wildlife not covered under the adopted provisions of the Habitat Conservation Plan, to include the San Joaquin kit fox, have occupied the property.

The results of the survey shall be summarized in a written report that shall include site-specific recommendations, if found necessary. A copy of the biological report shall be submitted to the Kern County Planning and Natural Resources Department – Community Development Division for transmittal to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, where applicable. Additionally, exclusion zones shall be established and maintained until all construction activities are completed unless said agencies prefer that any affected special-status species be removed and/or relocated in accordance with said agencies adopted guidelines or standard procedures.

2. At all times during the development of the site the project, the developer, contractors and subcontractors shall comply with applicable requirements of the San Joaquin Valley Air Pollution Control District. Prior to implementation the San Joaquin Valley Air Pollution Control District shall be contacted regarding any air permits needed to ensure the above noted activities are completed in compliance with the applicable air related standards and/or regulations. All activities undertaken shall be completed in compliance with the applicable air quality rules and all permits issued for the project.
3. Construction related activities which generate excessive noise shall be restricted to those periods of the day when persons are not likely to be disturbed by temporary increases in noise. Construction related noise generating actions shall be limited from the hours of 8 a.m. to 5 p.m. on weekdays and 8 a.m. to 4 p.m. for work conducted during on any weekend or holidays.
4. In the unlikely event that any cultural and historical resources are discovered during implementation of the undertaking further consultation with SHPO would be required pursuant to 36 CFR Part 800.13(b).

California Environmental Quality Act (CEQA)

The County of Kern completed a CEQA exemption for the project on June 8, 2021. The Project activities qualify for a Class 1 Categorical Exemption and the project is therefore exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines. All documentation pertaining to the CEQA clearance of the Project has been entered into the ERR file.

WITHHELD CONTRACT FUNDS CERTIFICATION

Public Contract Code Section 22300 requires the inclusion in invitations for public agency bids and in public agency contracts a provision which will, at the expense of the contractor, permit the substitution of securities of equal value for any construction progress monies withheld to ensure performance under a contract. Therefore, as a contractor on Project No. _____, entitled: _____

☐ I do not intend to substitute securities for monies withheld and thereby avail myself of the process and rights provided in Public Contract Code Section 22300.

☐ I do intend to exercise my option as specified in Public Contract Code Section 22300 and hereby agree to the following:

1. I will establish an escrow agreement satisfactory to the County, with a state or federally chartered bank, which shall contain at a minimum provisions governing inter alia:
 - a. The amount of securities to be deposited;
 - b. The type of securities to be deposited, (eligible securities for deposit are described in Government Code Section 16430);
 - c. The providing of powers of attorney or other documents necessary for the transfer of the securities deposited;
 - d. The terms and conditions of conversion to cash to provide funds to meet defaults by the Contractor including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract;
 - e. The decrease in value of securities on deposit; and
 - f. The termination of the escrow agreement upon completion of the contract and acceptance by the COUNTY.
2. I will obtain written consent of the surety to any such agreement; and
3. I will attach to each progress payment submitted a notarized copy of escrow instructions executed by agents thereof and on bank letterhead as proof that such an account has been established. Such instructions will set forth that securities deposited shall not be withdrawn for any purpose (with contractor's complete and unreserved agreement) without prior written approval by the County of Kern with respect to the project herein above referenced.

Contractor

By _____
(Signature)

(Title)

Business Address

Place of Residence

MEETING LABOR STANDARDS CONTRACT REQUIREMENTS
PRECONSTRUCTION CHECKLIST FOR CONTRACTORS

A. Introduction

The following checklist has been prepared to assist contractors and subcontractors in meeting their contractual labor standards responsibilities under federally assisted construction projects. All major administrative and procedural activities have been covered in the sequence they will occur as the construction project proceeds. **Careful attention to and use of the checklist should result in a minimum number of problems with respect to labor standards.**

B. Explanatory Notes

The word "County" can mean, as is appropriate to agreements between contracting entities; Kern County, or City, or District, or Local Development Corporation.

The word "employer" as used below refers to the project contractor, each subcontractor, or each lower-tier subcontractor. Payrolls and other documentary evidence of compliance are required to be delivered to the responsible County department for review. This delivery procedure is as follows:

1. Each lower-tier subcontractor, after careful review, delivers required documents to his/her respective subcontractor.
2. Each subcontractor, after checking his/her own and those of each lower-tier subcontractor, delivers required documents to the project prime contractor.
3. **The prime contractor, after reviewing all weekly payrolls and other required documentation, including his/her own, and correcting violations where necessary, delivers all documents to the County.**

NOTE: All employers should check each of the following statements as being true. If any statement is not true, the contractor should contact the County for special guidance.

C. Before construction begins, each employer has:

1. not been debarred or otherwise made ineligible to participate in any Federal or Federally assisted project. _____
2. received appropriate contract provisions covering labor standards requirements. _____
3. reviewed and understands all labor standards contract provisions. _____
4. received the Wage Decision which pertains to the contract. _____
5. requested through the County and received the minimum wage for each classification that will be working on the project and which was

not included on the wage decision; has not allowed any such trade classification to work on the project before receiving the requested minimum wage.

6. requested and received certification on his/her apprentice program from the U. S. Department of Labor – Office of Apprenticeship and delivered a copy thereof to the County prior to employment of apprentices on the project. Likewise, "trainee" program certification from USDOL/OA, if applicable, must be so delivered.
7. registered with the California Department of Industrial relations pursuant to Labor Code section 1725.5, or verified that the contract is not subject to the requirements of Chapter 1 of Part 7, Division 2 of the Labor Code

D. At construction start, the employer has:

1. notified the County of the proposed construction start date in writing.
2. received written Notice to Proceed from the County.
3. placed each of the following on a bulletin board prominently located on the project site which can be easily seen by the workers (and replaced if lost or unreadable any time during construction):
 - Wage Decision
 - Notice to Employee (WH 1321)
 - Equal Employment Opportunity is the Law
4. obtained the worker's name, mailing address, and Social Security Number for payroll purposes, **before** assigning each project worker to work,
5. obtained proof of each apprentice's individual registration in an approved apprenticeship program from the USDOL/OA.
6. informed each worker of:
 - a. his/her work classification as it will appear on the weekly payroll and on the project Wage Decision.
 - b. his/her duties of work.
 - c. the U. S. Department of Labor's requirement on this project that the worker is either a journeyman, apprentice, or laborer –
If a journeyman, he/she is to be paid a journeyman's minimum project wage decision rate, or more;

If an apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his/her year of apprenticeship; or

If a laborer, he/she is to do a laborer's work only (not use any tool or tools of a trade) and not perform any part of a journeyman's work and is to be paid the laborer's minimum project wage decision rate or more.

7. understood the requirements that each laborer or mechanic who performs work on the project in more than one classification within the same work week shall be classified and paid at the highest wage rate applicable to any of the work which he/she performed unless the following requirements are met:
 - a. Accurate daily time records shall be maintained. These records must show the time worked in each classification, the rate of pay for each classification, and must be signed by the workman.
 - b. The payroll shall show the hours worked in each classification and the wage rate paid for each classification.
 - c. The payroll shall be signed by the workman or a signed copy of the daily time record shall be attached thereto.
8. informed each worker of his/her hourly wages (not less than the minimum wage rate for his/her work which is stated in the project Wage Decision), explaining provisions for:
 - a. time and a half for all hours worked in excess of 8 in a day or 40 in a calendar week as provided for in the Contract Work Hours Safety Standards Act and in the State Labor Code,
 - b. fringe benefits, if any (see project Wage Decision for any required), and
 - c. deductions from his/her pay.
9. informed each worker that he/she is subject to being interviewed on the job by the responsible County department, HUD, Department of Labor, or other U. S. Government Inspector, to confirm that his/her employer is complying with all labor requirements.
10. informed each journeyman and each apprentice that a journeyman must be on the job at all times when an apprentice is working.

E. During Construction, each employer:

1. has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off, nor dismissed any project worker because of race, color, religion, sex, or national origin. _____
2. has employed all registered apprentices referred to him/her through normal channels up to the applicable ratio of apprentices to journeymen in each trade used by the employer. _____
3. will maintain basic employment records accessible to inspection by the County or U. S. Government representative. _____
4. will comply with all health and safety standards. _____
5. has paid all workers weekly. _____
6. has submitted original weekly payrolls — _____
 - a. prepared on recommended Form WH-347: available from:

Superintendent of Documents
Government Printing Office
Washington, D. C. 20402

Contractors who wish to purchase these forms are urged to enter their orders promptly because the Superintendent of Documents takes six weeks to fill orders. It is permissible for contractors to reproduce the forms.

NOTES:

Any alternate payroll form used should be cleared with the County before the employer starts work on a project. A computer printout, for example, is acceptable **provided all data shown on the front and back of Payroll Form WH-347 is on, or included with, the payrolls delivered to the County.**

Some employers place all project workers on Payroll Form WH-347. The County does not review those project workers, listed on the payroll, who perform work that is descriptive of any of the following job titles which are exempt from labor requirements:

	project superintendent
	project engineer
	supervisory foreman (less than 20% of time as working
foreman)	
	messenger
	clerical worker (timekeeper, payroll clerk, bookkeeper)

- b. Front page of payroll (Form WH-347)

1) Heading (6 "blocks" of information)

i) Name of Contractor or Subcontractor. Box is marked, whether contractor (prime) or subcontractor and name of employer is stated. _____

ii) Address. Street address or P. O. Box, City, State, and Zip Code of employer is stated. _____

iii) Payroll No. Each weekly payroll is numbered in sequential order starting with Payroll No. "1". _____

Payroll for final work week is marked "Final." _____

iv) For Week Ending. The last date of the work week is stated in this "block." _____

v) Project and Location. Name of project and community in which located. _____

vi) Project or Contract No. CD Project and/or Contract Number. _____

2) Internal Revenue Service (IRS) Employer Identification Number. The initial payroll submission from each contractor and subcontractor shall contain the applicable IRS-Employer's Identification Number written in the upper right corner of Form WH-347. _____

3) Body (9 Columns of information)

i) Column 1 – Name, Address, and Social Security Number of Employee (Worker). Name stated as it appears on pay check. _____

Worker's best mailing address and social security number is stated on Payroll No. 1 or the payroll on which the worker's name first appears. _____

If worker's address changes while working on the project, that worker's new address is stated on next applicable payroll. _____

If any two or more workers have the same name, their social security numbers are included on each weekly payroll to denote separate identification. _____

ii) Column 2 – No. of Withholding Exemptions. For employer's convenience – entry not required by County. _____

- iii) Column 3 - Work Classification. Must be included as it appears on the project Wage Decision (with Group Number, if any), denotes the work which the worker actually performed. State Federal classification, even when a higher State wage is paid.
-

NOTE: If the applicable classification is not included in the Wage Decision, contractor should call the responsible County department immediately, and request classification by Additional Classification Process via HUD.

Apprentice. If worker is an apprentice, the type of apprentice (Electrical, Plumbing, Cement Mason, etc.) is included in this column each time the apprentice's name appears on a weekly payroll,

Split Classification. If worker has performed more than one class of work during the work week, such as carpenter and laborer, the division of work will be shown on separate lines of the payroll. An accurate daily time record must show the exact hours of work performed daily in each class of work, and must be signed by the affected workman,

Each class of work he/she performed is stated in Column 3 in separate "blocks." His/her name is repeated in corresponding "blocks" in Column 1,

The breakdown of hours worked daily under each work classification is stated in Column 4, and total for week in Column 5,
The applicable wage rate for each classification of work is stated in Column 6,

The payroll is signed by the workman in the related "blocks" or a signed copy of the daily time records are attached to the payroll,

If the above is not done, the worker must be paid at least the highest minimum wage rate of all the classes of work performed for all hours worked.

NOTES:

Average Pay of Two Classes of Work is Not Acceptable.
The employer shall not pay a "semi-journeyman" or semi-skilled laborer the average of journeyman's and laborer's rates. The actual hours each worker uses tools of trade (journeyman) and each hour he does not use

tools of the trade (laborer) must be recorded in separate "blocks" in Column 3 of the payroll.

Helper. The work classification of "helper" is not accepted by the Department of HUD, unless included in the Wage Decision issued by the Secretary of Labor for the project. Any employee listed as "helper" in absence of such classification in the Wage Decision must be paid the journeyman's rate for hours he uses tools of the trade.

- iv) Column 4 - Day and Date. Label the columns within Column 4 with the days of the work week and the corresponding dates of the month.
-

Hours Worked Each Day:

Row O – Overtime Hours are stated for all time worked in excess of 8 hours in any day or 40 hours in any calendar week.

Row S – Straight Hours are stated for each day worked up to 8 hours in any day or 40 hours in any calendar week.

- v) Column 5 - Total Hours.

Row O – Total overtime hours worked during the work week (sum of 7 sub-columns in Column 4).

Row S – Total straight hours worked during the work week (sum of 7 sub-columns in Column 4), maximum of 40 hours.

- vi) Column 6 - Rate of Pay.

Row O – Must not be less than 1-1/2 times the worker's basic hourly rate of pay (State Labor Code) stated in Column 6, Row S.

Row S – Actual wage paid, which must not be less than the minimum wage rate for the work classification stated in Column 3 (see Federal Wage Decision and State Prevailing Wage, use whichever is higher).

Apprentices. If a copy of the apprentice's registration certificate from the State BAT has not been submitted to County by employer (through the prime contractor), apprentice must be paid journeyman's rate.

Piece Worker. Piece work must be stated in Column 6 at an hourly rate computed as the gross pay for the work week (work on the project) divided by the total number of hours worked on the project during the work week.

vii) Column 7 - Gross Amount Earned.

Upper Left – Equals straight hours shown in Column 5, Row S times straight rate of pay shown in Column 6, Row S plus overtime hours (if any) shown in Column 5, Row O times overtime rate of pay shown in Column 6, Row O.

Lower Right – Equals gross amount earned on project shown in Column 7, Upper Left plus the gross amount earned for all work performed by worker during the work week on other projects, jobs, contracts, etc.

viii) Column 8 - Deductions. Each deduction made (especially "Other Deductions") is required by law, or voluntarily authorized by the worker in writing before the work week began, or provided in a bargaining agreement to be deducted from the respective worker's pay.

Other – All deductions in this sub-column have been specifically identified in the space provided between item (1) and (2) on the back of Payroll Form WH-347 (left side of form).

ix) Column 9 - Net Wages Paid for Week. Total gross amount earned shown in Column 7, Lower Right minus total deductions shown in Column 8.

c. Back of Payroll (Form WH-347), each employer has:

- 1) completed all blank spaces and understands the penalties for falsification,
-

identified all "Other" deductions shown in the sub-column of Column 8 on the front of the form,

checked Item 4 if fringe benefits are included in the Wage Decision for any of his/her workers -

4(a) - if fringe benefits are paid to approved fund(s), or

4(b) - paid directly to each affected worker - included in paycheck for the work week - his/her paycheck representing at least the pay of the applicable

minimum wage rate plus the amount of required fringe benefits.

provided detail of exceptions to section 4(a) or 4(b), such as s split in fringe benefits where vacation is paid in cash and all other fringes are paid to a plan,

remarked on rate of pay calculations, such as the calculation of an overtime rate when fringe benefits are paid in cash,

- 2) manually signed (with a "wet signature") the payroll in ink in the "block" marked signature, and stated his/her title.
- 3) verified the person who signed the payroll is the employer or an official of the employer who is legally authorized to act for the employer.

- d. Weekly Payroll Review. Each employer has promptly reviewed the weekly payroll for compliance with all labor requirements (using this checklist) and made necessary corrections.

Each Lower-tier Subcontractor has delivered his/her weekly payroll to the respective subcontractor within three (3) calendar days from the last date of the work week.

Each subcontractor has received a payroll from each of his/her lower-tier subcontractors; reviewed each and his/her own payroll; required necessary corrections; and delivered all of such payrolls to the prime contractor within five (5) calendar days from the last date of the work week.

Contractor has received a payroll from each subcontractor and each lower-tier subcontractor; monitored each including his/her own payroll; required necessary corrections; and collectively delivered them to the County within seven (7) work days of the last date of the respective work week.

F. After Project Completion, each employer:

will keep all weekly payrolls related to the project for three (3) years after the contractor's project completion date or until all project audit issues are resolved, whichever is later.

Revised: April 2016

MATERIAL COVERED AT PROJECT PRECONSTRUCTION CONFERENCE

PURPOSE

AGENDA

- I. Contractor/Subcontractor Information Sheet Form CDA-100
- II. Section 3 Compliance Instructions
- III. Executive Order No. 11246, amended by Executive Order No. 11375, Equal Employment Opportunity
- IV. Contractor's Ratio of Apprentices to Journeymen AND Proving Employee Apprentice Status
- V. Project Wage Determination
- VI. Fringe Benefit Statement
- VII. U.S. Department of Labor Form WH-347, Weekly Payroll Sheet
- VIII. U.S. Department of Labor Form WH-348, Statement of Compliance
- IX. Working Subcontractors
- X. Record of Employee Interview, Form HUD 11

PRECONSTRUCTION CONFERENCE

PURPOSE

HUD requires that CDBG recipients hold a conference with the principal project contractor and all available subcontractors prior to the actual start of project construction. Seven days lead notice of conference date is required by HUD. The purpose of the Conference is to inform project contractors of their responsibilities relating to Equal Employment Opportunity, Federal Labor Standards, and general contract compliance.

AGENDA

I. Contractor/Subcontractor Information Sheet, Form CDA-100

- A. Required for completion of County's Contract and Subcontract Activity Report to HUD.
- B. This form is used to document whether the contractor/subcontractor is a:
 - 1. Minority Contractor
 - 2. Woman Contractor
 - 3. Contractor whose contract was procured by Competitive Bidding
- C. Submission is required prior to issuance of "NOTICE TO PROCEED."
- D. Construction cannot start until proper review and approval by County.

II. Section 3 Compliance Instructions

- A. Purpose of this Program is to ensure that employment and other economic opportunities generated by the HUD financial assistance on this project shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low - and very low - income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low - and very low - income persons.
- B. Section 3 applies to HUD funded housing and community development projects which receive federal financial assistance exceeding \$200,000 and for which contract or subcontract amounts exceed \$100,000.
- C. Please consult the Section 3 Compliance Instructions contained in the project specification manual for more details regarding project Section 3 compliance.

III. **Executive Order No. 11246, amended by Executive Order No. 11375, Equal Employment Opportunity.**

- A. The purpose of Executive Order No. 11246, as amended by Executive Order No. 11375, is to assure that project contractors and subcontractors will not discriminate against project employees in regard to their race, color, religion, sex or national origin.
- B. For federally funded construction contracts in excess of \$10,000, contractors and subcontractors are required to make a good faith effort to ensure that 19.1% of all work hours are performed by minority workers and that 6.9% of all work hours are performed by women.
- C. Written Affirmative Action Plans are required for federally funded construction prime contracts of \$1,000,000 or more and for subcontracts of \$100,000 or more.
- D. All contractors and subcontractors working on federally-assisted construction projects are required, by the U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs (OFFCP) to collect race and gender information on construction employees, classified by trade. This information must be maintained not only for this project, but for all work your firm is performing, whether it is federally funded or not. The U. S. Department of Labor reserves the right to review this information in the future.
- E. HUD may impose sanctions such as contract suspension or termination and/or debarment in future federally funded construction projects in cases of noncompliance.

IV. **Contractor's Ratio of Apprentices to Journeymen AND Proving Employee Apprentice Status**

- A. The purpose of the Contractor's Ratio of Apprentices to Journeymen is to comply with the California Labor Code regarding employment of apprentices on public works projects.
- B. The contractor or subcontractor shall apply for a certificate from the local craft Joint Apprenticeship Council, approving the contractor's or subcontractor's participation in an apprenticeship program.

- C. The ratio of apprentices to journeymen in any craft or trade employed on a public works project is to be no less than one apprentice to each five Journeymen.
- D. Noncompliance requires withholding of fifty dollars (\$50.00) from progress payments for each day of noncompliance.
- E. For each apprentice listed on project payrolls, the contractor or subcontractor shall submit with the first payroll the apprentice is listed on, current registration information from the U. S. Department of Labor - Office of Apprenticeship. **Copies of Apprentice Agreements will no longer be accepted as proof of registration in an approved program.** ALSO, each apprentice who is listed on project payrolls must have listed for them what type of apprentice (Electrical, Plumbing, Cement Mason, etc.) they are.

V. **Project Wage Determination**

- A. The Wage Determination lists the minimum wages to be paid all non-supervisory employees.
- B. Listed are the different Hourly Rates of Pay for all employees depending upon each employee's Labor Classification and Group Number.
- C. All employees listed on any project payrolls are to be listed by their proper Labor Classification Title and Group Number as found in the project Wage Determination for the type of work they actually perform.

VI. **Fringe Benefit Statement**

- A. The purpose of the "Fringe Benefit Statement" is to have the contractor/subcontractor provide additional information regarding fringe benefits paid into an "...approved plan, fund, or program."
- B. Listed are the hourly rates for the various categories of fringe benefits, and the name & address of the fund to which the fringe benefits are being paid into, for each labor classification being used on the job-site.
- C. The information provided on this Statement is used to assist the project monitor in payroll reviews to verify that employees are receiving the required total wage package (the basic rate plus fringe benefit per hour).
- D. The "Fringe Benefit Statement" is to be submitted by the prime contractor and each sub-contractor (who has **not** already indicated that fringe benefits are being paid in cash to the employee) with the first weekly Certified Payroll for work performed.

VII. **U. S. Department of Labor Form WH-347, Weekly Payroll Sheet**

- A. The purpose of Form WH-347, Weekly Payroll Sheet, is to verify that all project employees are being paid weekly and correctly. The use of any other payroll form will be acceptable only if its format includes all the information needed to meet HUD requirements. All payrolls submitted must be originals, with "wet signatures" on the Statements of Compliance.
- B. The Weekly Payroll Sheet is to be submitted to the County/Owner/Architect or Engineer once a week, each week, that work was done on this project.
- C. Weekly Payroll Computations will be checked for both mathematical accuracy and for any non-permissible deductions.
- D. Untimely submittal or submittal with errors will require holding up of progress payments, until this form is received.
- E. Prime Contractors and subcontractors must retain their basic payroll records (payroll register, individual earning cards, check stubs, etc.) for a three year period after completion of the project.
- F. If requested, contractors shall make their Superintendent's log book available to the payroll reviewer for payroll compliance review purposes.

VIII. **U.S. Department of Labor Form WH-348, Statement of Compliance**

- A. The purpose of Form WH-348 is to certify that any payrolls submitted for this project are correct and complete. The use of any other compliance statement form will be acceptable only if its format substantially includes all the language and citations required by the U.S. Department of Labor WH-348 form.
- B. The Statement of Compliance is to be submitted to the County/Owner/Architect or Engineer with the Weekly Payroll once a week, each week, that work was done on this project.
- C. The Statement of Compliance is to be submitted no later than seven work days after the end of the week being reported, as is the case with Form WH-347, Weekly Payroll Sheet.
- D. If Statements of Compliance are signed by someone other than an owner or officer of the firm (such as President, Treasurer, or Payroll Administrator), a "Certificate of Authorization" that gives permission to the non-owner or the non-officer to sign the statements must be submitted with the first payroll.

- E. Untimely submittal or submittal with errors or omissions will require holding up progress payments until this form is received.
- F. Fringe benefit payments to plans, funds, or programs may be verified by the County/Owner/Architect or Engineer.

IX **Working Subcontractors**

- A. The payment of prevailing wage rates established by HUD provide that the wage protections afforded apply to laborers and mechanics employed on federally-assisted construction contracts regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Additionally, all laborers and mechanics must be paid unconditionally and not less often than once per week. There is **no** exception to this protection for self-employed laborers or mechanics, including owners of businesses, sole-proprietors, partners, corporate officers, or others.
- B. "Laborers and mechanics" may **not** certify to the payment of their **own** prevailing wages **EXCEPT** where the laborer or mechanic is the owner of a business working on the site of the work with his/her own crew.
- C. Payrolls submitted reporting single or multiple owners certifying that they have paid to themselves the prevailing wage for their craft are unacceptable; rather, such laborers or mechanics must instead be carried on the certified payroll of the contractor or subcontractor (the "responsible employer") for whom they are working and with whom they have executed a contract.
- D. Whatever method of compensation computation is utilized, the amount of weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate for that week that is not less than the prevailing hourly rate for the type of work involved. The name, work classification, actual hours of work, effective hourly wage rate, and wage payment of each self-employed laborer and mechanic must be reported and certified on the responsible employer's weekly payroll.
- E. More extensive guidance for the Federal prevailing wage requirements and compliance standards for self-employed laborers and mechanics (also referred to as "working subcontractors") is detailed in Labor Relations Letter No. LR-96-01, dated December 2, 1996. Additional information is also provided regarding HUD's compliance and certification parameters for owner-operators of power equipment and truck drivers.

X. **Record of Employee Interview, Form HUD-11**

- A. Interviews will be conducted by County/Owner/Architect or Engineer staff or their designee.
- B. Required to document the confirmation that:
 - 1. Project Employees are working in the correct classification; and
 - 2. For the correct pay.
- C. Random samples of each contractor/subcontractor(s) workforce will be interviewed throughout the course of the project.
- D. Comparisons of interview forms with the Weekly Payroll Sheets and Prevailing Wage Decision will assure proper payment to project workforce.
- E. Failure to resolve discrepancies within a reasonable period of time will cause future progress payments to be held up.
- F. County/Owner/Architect or Engineer staff who administer the HUD-11 forms are hereby reminded that they are to indicate "None" in the Remarks sections of the form when there is nothing additional to report from the actual interview or the comparison of the HUD-11 form to the payroll and the project wage decision. The HUD-11 interviewer and payroll examiner are each to sign and date the form in the spaces provided when they have completed the interview and examination.

Revised: September 2004

I:\AFC\Agreement Templates\Exhibits\C. Materials Covered at Preconstruction.doc

STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS FOR STATE, LOCAL AND
FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

(CDBG Fund Regulations at 2 CFR 200.302)
(November 2020)

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose Lobbying activities pursuant to 31 U.S.C. 1352

(See page 2 for public burden disclosure)

Approved by OMB
0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Prime _____ Subawardee _____ Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number: _____	9. Award Amount: \$ _____	
10a. Name and Address of Lobbying Registrant: (if individual, last name, first name, MI)	b. Individuals Performing Services: (including address if different from No. 10a.) (last name, first name, MI)	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification on this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement, number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**FEDERAL LABOR STANDARDS PROVISIONS
(HUD DOCUMENT 4010)
(JUNE 2009)**

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon

prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full

social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon

request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee

must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the

meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false.....shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such 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 the clause set forth in subparagraph (1) of this paragraph, 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 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

3. Withholding for unpaid wages and liquidated damages. HUD or its designee 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 the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, 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 the clause set forth in subparagraph 2. of this paragraph.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

3. The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

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STATE OF CALIFORNIA LABOR CODE REQUIREMENTS

Unless specified otherwise, any reference in this Section to subcontractor shall also include the prime construction contractor.

Labor Code Requirements

Attention is directed to the following requirements of the Labor Code:

(a) Hours of Labor

Eight hours labor constitutes a legal day's work. CITY/DISTRICT/NONPROFIT or any subcontractor under CITY/DISTRICT/NONPROFIT shall forfeit, as a penalty to the Planning and Community Development Department, \$25 for each worker employed in the execution of the construction under the contract by CITY/DISTRICT/NONPROFIT or subcontractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the requirements of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of CITY/DISTRICT/NONPROFIT in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

(b) Prevailing Wage

1. In respect to the Grant funded construction, CITY/DISTRICT/NONPROFIT and any subcontractor under CITY/DISTRICT/NONPROFIT shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, CITY/DISTRICT/NONPROFIT and any subcontractor under CITY/DISTRICT/NONPROFIT shall forfeit to the Planning and Community Development Department a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by CITY/DISTRICT/NONPROFIT or by any subcontractor under CITY/DISTRICT/NONPROFIT in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of CITY/DISTRICT/NONPROFIT or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of CITY/DISTRICT/NONPROFIT or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by CITY/DISTRICT/NONPROFIT or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if CITY/DISTRICT/NONPROFIT or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by CITY/DISTRICT/NONPROFIT or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project or CITY/DISTRICT/NONPROFIT is not liable for the penalties described above unless the prime contractor or CITY/DISTRICT/NONPROFIT had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor or CITY/DISTRICT/NONPROFIT fails to comply with all of the following requirements:

- a. The contract executed between CITY/DISTRICT/NONPROFIT and the subcontractor for the performance of work on the public works project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.
- b. CITY/DISTRICT/NONPROFIT shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

- c. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, CITY/DISTRICT/NONPROFIT shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
- d. Prior to making final payment to the subcontractor for work performed on the public works project, CITY/DISTRICT/NONPROFIT shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

2. Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify CITY/DISTRICT/NONPROFIT on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if CITY/DISTRICT/NONPROFIT did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, CITY/DISTRICT/NONPROFIT shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. CITY/DISTRICT/NONPROFIT shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by CITY/DISTRICT/NONPROFIT within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, CITY/DISTRICT/NONPROFIT shall pay all moneys retained from the subcontractor to COUNTY. These moneys shall be retained by COUNTY pending the final decision of an enforcement action.

3. Pursuant to the requirements in Section 1773 of the Labor Code, CITY/DISTRICT/NONPROFIT has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned.

4. The general prevailing wage rates and any applicable changes to these wage rates are available from the California Department of Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>.

5. The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the contract. CITY/DISTRICT/NONPROFIT shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

6. Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by CITY/DISTRICT/NONPROFIT at a prominent place at the site of the work.

7. Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by the Director of Industrial Relations at least 10 days prior to the date of the Notice to CITY/DISTRICT/NONPROFIT for the project.

8. COUNTY will not recognize any claim for additional compensation because of the payment by CITY/DISTRICT/NONPROFIT or its subcontractor of any wage rate in excess of the prevailing wage rate set forth in the contract.

(c) Payroll Records

1. Attention is directed to the requirements in Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations.

"Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in the connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a. The information contained in the payroll record is true and correct.
- b. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

"The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of CITY/DISTRICT/NONPROFIT on the following basis:

- a. Certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- b. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- c. A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by CITY/DISTRICT/NONPROFIT, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of CITY/DISTRICT/NONPROFIT.

"The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

"CITY/DISTRICT/NONPROFIT or subcontractor shall file a certified copy of the records with the entity that requested the records within 10 days after receipt of a written request.

"Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of CITY/DISTRICT/NONPROFIT and the subcontractor performing the contract shall not be marked or obliterated.

"The subcontractor shall inform the body awarding the contract of the location of the records including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

"CITY/DISTRICT/NONPROFIT or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records. In the event that CITY/DISTRICT/NONPROFIT or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then

due. CITY/DISTRICT/NONPROFIT is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

2. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to CITY/DISTRICT/NONPROFIT.

3. A copy of all payrolls shall be submitted weekly to CITY/DISTRICT/NONPROFIT. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which that name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Department or on any form with identical wording. CITY/DISTRICT/NONPROFIT shall be responsible for the submission of copies of payrolls of all subcontractors. CITY/DISTRICT/NONPROFIT and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the contract.

(d) Apprentices

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, CITY/DISTRICT/NONPROFIT or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with CITY/DISTRICT/NONPROFIT.

(e) Workers' Compensation

Pursuant to the requirements in Section 1860 of the Labor Code, the subcontractor will be required to secure the payment of workers' compensation to the subcontractor's employees in conformance with the requirements in Section 3700 of the Labor Code. Prior to the commencement of work, the subcontractor shall sign and file with CITY/DISTRICT/NONPROFIT a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

This certification is included in the contract, and signature and return of the contract shall constitute signing and filing of the certificate.

(f) Suits to Recover Penalties and Forfeitures

1. Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on those laws.

2. Those sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the subcontractor or the subcontractor's assignees with reference to amounts withheld for those penalties or forfeitures; and that the suit must be commenced and actual notice thereof received the amounts withheld from payment for those penalties and forfeitures is not a prerequisite for those suits, and these claims will not be considered.

(g) Required Registration with the California Department of Industrial Relations

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code . It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 of the Labor Code at the time the contract is awarded.

Pursuant to California Labor Code 1725.5, all contractors and subcontractors must be registered with the Department of Industrial Relations (DIR) in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract. Detailed information about contractor's responsibilities and online registration may be obtained on the State of California Department of Industrial Relations, Public Works website, <http://www.dir.ca.gov/Public-Works/PublicWorks.html>

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
(24 CFR, Subtitle A, Part 1, Section 1.5 Assurances Required)

1.5 Assurances Required

(a) General

(1) Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance, the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Part 1 shall extend to any facility located wholly or in part in such space.

(b) Pre-existing contracts - funds not disbursed. In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) Pre-existing contract - periodic payments. In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965:

(1) Submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1; and

(2) Provide such methods of administration for the program or activity as are found by the

responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1.

(d) Assurances from institutions.

(1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) Elementary and secondary schools. The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health and Human Services determines is adequate to accomplish the purposes of the Act and this Part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

(Authority: Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

[38 FR 17949, July 5, 1973, as amended at 50 FR 9269, March 7, 1985]

EQUAL OPPORTUNITY

(48 CFR 52.222-26)
(Sept 2016)

(a) Definitions. As used in this clause—

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

Compensation information means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

Essential job functions means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if—

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60–1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60–1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

UTILIZATION OF SMALL BUSINESS CONCERNS

(48 CFR 52.219-8)
(Oct 2018)

(a) Definitions. As used in this contract -

HUBZone small business concern means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern -

(1) Means a small business concern -

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that -

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by -

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Veteran-owned small business concern means a small business concern -

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern -

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum

practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if -

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management or by contacting the SBA. Options for contacting the SBA include -

(i) HUBZone small business database search application Web page at

http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

Small Business Subcontracting Plan
(48 CFR 52.219-9)
(JUN 2020)

Small Business Subcontracting Plan (JUN 2020)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause -

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

Commercial item means a product or service that satisfies the definition of commercial item in Federal Acquisition Regulation (FAR) 2.101.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

Total contract dollars means the final anticipated dollar value, including the dollar value of all options.

Untimely payment means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if -

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626 -

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the

appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

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(2) A statement of -

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to -

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g.,

outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with -

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will -

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
- (iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;
- (iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
- (v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
- (vi) Provide its prime contract number, its unique entity identifier, and the email address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and
- (vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the

subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, indicating -

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact -

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through -

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if -

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided -

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United

States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(1)(iii) or 19.301-2(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides -

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual subcontracting plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR 19.702(a), and the contract contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

48 C.F.R. § 52.219-9

SMALL BUSINESS PARTICIPATION REQUIREMENTS

(Applies only to projects where CDBG funding is more than \$100,000 and less than \$500,000)

- I. It is the policy of the HUD that small businesses and women business enterprises shall have the maximum practicable opportunity to participate in the performance of HUD funded contracts.
- II. The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. Contractors may rely on written representations by subcontractors regarding their status as small businesses in lieu of an independent investigation.
- III. A Small Business (SB) is a business, including its affiliates, which is independently owned and operated, not dominant in its field of operation in which it is bidding for government contracts, and qualified as a small business under the criteria in 13 CFR part 121. The size criterion entitled "Small Business Size Standards" is within this bid specification or request for proposal package for reference.
- IV. Bidding Contractors shall make the maximum attempt feasible to achieve the County's objective for SB participation in CDBG funded contracts by performing the contract administration and compliance steps as follows:
 - A. Contract Administration: The contractor shall insert this clause in any subcontract involving CDBG funding of more than the simplified acquisition threshold, fixed at 41 U.S.C. 403 (11) (currently set at \$100,000), monitor the subcontractor's compliance, and maintain records of such compliance.
 - B. Contract Compliance: The Contractor shall evidence his/her understanding of and intent to comply with the County's CEDD SB Plan by submitting, as an integral part of his/her bid, the following:
 1. To verify attainment of County's SB goals **submit, with bid**, Form SB-241 "SMALL BUSINESS AND WOMAN BUSINESS ENTERPRISE UTILIZATION BID SUBMISSION TO THE COUNTY OF KERN"; and
 2. When non-attainment occurs, **submit, with bid**, Form SB-242, "LIST OF NECESSARY AFFIRMATIVE STEPS TAKEN TO INVOLVE SMALL BUSINESSES (SBs)", including any additional documentation which provides evidence of the contractor's efforts to attain the County's SB goals, which is to include the following:
 - a. Statement of contractor's efforts to enter into direct contact with SBs.
 - b. Report of responses received from SBs, including proposals or bids and the contractor's response thereto.
 - c. Copies of correspondence sent to groups and individual SBs as notification of the contractor's intent to contract with SBs.
 - d. Report of specific contacts with small contractor's associations, small business development centers, or any other agency which may disseminate bid information to SBs.
 - e. Description of specific efforts undertaken by prime contractors to encourage subcontractors to obtain SB participation.

The bid forms section within this bid specification or request for proposal package includes both SB Forms. Bidders are hereby notified that in the event they do not meet the County's SB goal, their firm can still receive a CDBG funded contract if they performed all of the listed steps.

- V. Bidders are hereby notified that the text of the entire SB Plan is available at P&CDD upon request.

SMALL BUSINESS SUBCONTRACTING PROGRAM

(Applies only to projects where CDBG funding is more than \$500,000)

- I. The Contractor agrees to establish and conduct a program which will enable small businesses to be considered fairly as subcontractors under this contract. The term "small business", as used in this clause, is defined at III. of the "Small Business Participation Requirements" contract clause. In this connection, the Contractor shall:
 - A. Designate a liaison officer who will administer the Contractor's Small Business Subcontracting Program.
 - B. Provide adequate and timely consideration of the potentialities of known small businesses in all "make-or-buy" decisions.
 - C. Assure small businesses will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small businesses.
 - D. Submit periodic reports of subcontracting to small businesses with respect to the records referred to in subparagraph (5), in such form and manner and at such time (not more often than quarterly) as CEDD's SB Liaison Officer may prescribe.
 - E. Maintain records showing (i) procedures adopted to comply with the policies set forth in this clause, including the establishment of a source list of small businesses, (ii) awards to small businesses on the source list, and (iii) specific efforts to identify and award contracts to small businesses.
 - F. Cooperate with CEDD's SB Liaison Officer in any studies and surveys; he/she may conduct, regarding small business procedures and practices of prime contractors.
- II. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000, provisions which shall conform substantially to the language of this clause, including this paragraph II, and to notify the SB Liaison Officer of the names of such subcontractors.

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

(48 CFR 52.222-36)
(JUN 2020)

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS,
VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

(48 CFR 52.222-35)
(JUN 2020)

EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)

(a) Definitions. As used in this clause -

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

Employment Reports on Special Disabled Veterans, Veterans
of the Vietnam Era, and Other Eligible Veterans

(48 CFR 52.222-37)
(JUN 2020)

Employment Reports on Veterans

(a) Definitions. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in Federal Acquisition Regulation (FAR) 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on -

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date -

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager

DATE: September 21st, 2021

SUBJECT: Adopt a Resolution approving an Employment Agreement with Maria Lara as Assistant City Manager in the amount of \$108,680.00 annually and authorize the City Manager to Execute the Agreement.

Recommendation:

Staff recommends adopting a resolution approving an Employment Agreement with Maria Lara as the Assistant City Manager for the City of Wasco in the amount of \$108,680.00 annually and authorize the City Manager to execute the Agreement.

Discussion:

The City would like to contract Maria Lara as the Assistant City Manager effective October 1st, 2021. Ms. Lara has previously served as a full-time City Manager, Community Development Director, Grants Director, and Grant Administrator for the City of McFarland. Ms. Lara holds a Bachelor of Science in Criminal Justice Administration, Bachelor of Art in Spanish, and Master of Arts in Criminal Justice from Boise State University.

The Assistant City Manager is responsible for overseeing a variety of special projects. Tasks include but are not limited to grant administration, formulation, and administration of City policy, strategic planning, economic development, and other items that arise over time. It is crucial to have an individual who can understand the technical aspects of the local government and the needs of our residents and customers. More importantly, this individual will need to have a "big-picture" perspective to help guide the community into the future. They must be willing and capable of working in a collaborative manner with people at all levels within the organization, as well as be able to communicate and engage with the community, the City's executive leadership team, and the City Council.

Ms. Lara's employment agreement will be for an initial term of three years with an annual salary of \$108,680.00. Her other terms and benefits are similar to those of other current and previous department directors. The employment agreement has been developed by the City's employment law attorney and reviewed by the City Attorney.

Wasco Municipal Code states:

"2.04.130 Powers and duties--Appointment and removal.

It shall be the duty of the city manager to, and he shall appoint, remove, promote

and demote any and all officers and employees of the city, excepting elected officers and the city attorney. The city manager shall enter into a contract in writing on behalf of the city with all department heads in a form approved by the city council."

Fiscal Impact:

The estimated fiscal impact is equal to the current and future annual budget appropriation for salary and benefits relating to the Employment Agreement. No budget action is required.

Attachments:

1. Resolution
2. Employment Agreement

RESOLUTION NO. 2021 -

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO APPROVING
THE EMPLOYMENT AGREEMENT BETWEEN MARIA LARA AS ASSISTANT CITY MANAGER AND
THE CITY OF WASCO.**

WHEREAS, the City wishes to employ Lara as the Assistant City Manager; and

WHEREAS, Lara will be employed by the City under the terms and conditions described in the employment agreement; and

WHEREAS, said agreement will be made in the form and manner prescribed to other director-level employees; and,

WHEREAS, the Agreement shall be governed by and construed in accordance with the employment laws of the State of California; and,

NOW THEREFORE BE IT RESOLVED,

SECTION 1: Approves the employment agreement for Maria Lara.

-o0o-

I HEREBY CERTIFY that the foregoing Resolution No. 2021 - was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21st, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

ABSTAIN:

ABSENT:

GILBERTO REYNA,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco

EMPLOYMENT AGREEMENT NO. _____
CITY OF WASCO ASSISTANT CITY MANAGER

This Employment Agreement (“Agreement”) is made by and between the City of Wasco, a California municipal corporation, (“the City”) and Maria Lara, an individual (“Employee;” collectively, “the Parties”). The effective date of this Agreement shall be the date that it is approved by the City Council.

RECITALS

- A. The City desires to employ the services of Employee as Assistant City Manager (the “Classification”), under the terms and conditions set forth herein, and Employee is agreeable to same;
- B. Employee represents that he/she has the requisite specialized skills, training, certifications, licenses, and authorizations and is otherwise qualified to serve in the Classification.
- C. In connection with and contingent to Employee’s acceptance of employment in the Classification, the City and Employee wish to enter into an Employment Agreement that sets forth the rights and obligations of the Parties, and that will supersede all prior negotiations, discussions or agreements.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants, promises, and conditions herein contained, the City and Employee agree as follows:

1. INCORPORATION. The Parties incorporate the foregoing recitals as if fully set forth herein verbatim.

2. HIRE; COMMENCEMENT OF EMPLOYMENT. The City hereby hires Employee as Assistant City Manager subject to the terms and conditions of this Agreement, effective as of the date that it is approved by the City Council, or Employee’s first day of work in the Classification, whichever is later.

3. TERM OF EMPLOYMENT. The Term of this Agreement shall begin on the date that it is approved by the City Council, or Employee's first day of work in the Classification, whichever is later and shall expire three years from that date. At the sole discretion of the City Manager, the Term may be extended for a period of two year(s) thereafter by means of a writing memorializing same consistent with the NOTICE provisions herein.

4. AT-WILL EMPLOYEE. Employee understands that he/she is an employee “at-will” under California law. Employee understands that, except as specifically controlled by this Agreement, Employee holds this position and continues in employment at the pleasure of the City. Employee understands that Employee may be terminated at any time, for any reason, or for no reason. Except as otherwise provided by law or this Agreement, the City may remove Employee

from Employee's position and may terminate this Agreement and the employment relationship with or without cause and with or without prior notice (except as designated in this Agreement, below). Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from employment with the City. Employee specifically relinquishes any protections, privileges, or perquisites that have or had any effect on the "at-will" nature of his/her employment.

5. DUTIES AND AUTHORITY. Employee shall exercise the full powers and perform the duties of the Classification, as set forth in the job description (if any) as well as all other applicable ordinances, laws, rules, regulations, and procedures, as they now exist or as they may hereafter be amended. Employee shall exercise such other powers and perform such other duties as the City Manager, or City Manager's designee may require from time to time.

5a. HOURS OF WORK. Employee's position is full-time with a work schedule generally consistent with the normal business hours adopted by the City and those necessary to fulfill the obligations required for the position. Employee understands and acknowledges that the nature of the Classification is such that Employee's presence and the performance of Employee's duties will from time to time be required outside of normal business hours, including meetings, training, and emergencies that may arise.

6. PLACE OF EMPLOYMENT. Unless the Parties agree otherwise in writing in accordance with the terms set forth herein, Employee shall perform the duties of the Classification at the City's place of business, which is at the time of the execution of this Agreement 746 8th Street, Wasco, California. The City may from time to time require Employee to travel to other locations as necessary to discharge Employee's duties and or the duties/requirements of the Classification.

7. EMPLOYEE'S OBLIGATIONS. During the term of this Agreement, Employee shall remain in the exclusive employ of the City. Employee shall accept no other employment and shall not become employed by any other employer until the end of the term of this Agreement, or until this Agreement may otherwise be ended and Employee released from his/her obligations hereunder. Employee shall devote Employee's full energies, interest, abilities and productive time to the performance of this Agreement, and shall utilize Employee's best efforts to promote the City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which interferes with, his/her duties and responsibilities to the City, except as authorized in writing (including e-mail) by the City. Employee shall obtain prior authorization from the City Manager for any outside employment, consulting, teaching or enterprise. City retains the right to amend said authorization, place further condition, or revoke authorization if the outside employment is actually or potentially in conflict with or inimical to, or which interferes with, his/her duties and responsibilities to the City.

7a. RESIDENCY WAIVED. The City waives any requirement that Employee's residence within the City of Wasco be a term or condition of Employee's employment.

8. EVALUATIONS. Employee's performance in the Classification shall be reviewed in writing by the City on or near the yearly anniversary of the commencement of this Agreement. If the City does not conduct such review within twenty (20) days of such anniversary, it is Employee's responsibility to request in writing that such review be conducted. The absence of any such written review, the failure of the City to conduct such review, or the failure or refusal of Employee to request such review, shall not be deemed an indication of Employee's satisfactory performance in the Classification.

9. SALARY AND BENEFITS.

A. Salary:

(1) Base Salary. The City shall pay Employee a base salary of one hundred eight thousand six hundred eighty dollars (\$108,680.00) annually, subject to legally permissible, voluntary or required withholding, prorated and paid on the City's normal paydays. Employee specifically agrees that this amount is intended to be, and is, compensation for all hours worked by Employee. Employee expressly understands that Employee is exempt from the overtime pay provisions of California law (if any) and federal law. The City Manager may, from time to time and as specified herein, increase Employee's base salary provided that (a) Employee satisfies written and quantifiable goals and objectives; and (b) such increase does not cause Employee's salary to exceed the salary range approved and published by the City Council.

(2) Expenses. The City recognizes that Employee may incur certain expenses of a non-personal and job-related nature. The City agrees to reimburse or to pay such reasonable business expenses as are established by the City's policies, which are authorized for reimbursement, and which are incurred and submitted according to the City's normal expense approval and reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.

B. Employment Benefits. In addition to base salary, the City shall provide to Employee the following benefits:

(1) Holidays. Employee shall be entitled to the scheduled holidays generally available to other executive employees of Employer. Employee's salary includes holiday pay. Accordingly, Employee shall not be entitled to any additional salary or compensation for working on a holiday.

(2) Other Leave Benefits. Employee shall receive the following additional paid and unpaid leave benefits:

(a) Vacation. Upon commencement of employment, Employee shall be credited with forty (40) hours vacation time and Employee shall accrue vacation time at a rate of 6.16 per bi-weekly pay period; however, Employee shall not be permitted to accrue more than a maximum of one hundred sixty (160) vacation hours. On each anniversary of this Agreement, or

in reasonable proximity to same as determined in the sole discretion of the City Manager but not to exceed two weeks, Employee may “cash-out” up to one hundred twenty hours of accrued but unused vacation time; however, Employee may not use the “cash-out” process to create a negative vacation balance.

(b) Sick Leave. Employee shall accrue sick time at a rate of 4 hours every two weeks. Employee shall not be permitted to accrue more than a maximum of one hundred twenty (120) sick leave hours, and to the extent that Employee’s sick leave accrual exceeds one hundred twenty (120) hours at the commencement of the Term of this Agreement, Employee shall accrue no additional sick leave until such time as Employee’s usage of currently accrued time causes Employee to fall below one hundred twenty hours, at which point Employee shall accrue sick time consistent with this provision until the one hundred twenty hour cap is again reached. Upon retirement with PERS and termination of this Agreement consistent therewith, Employee will be afforded the opportunity to contribute all unused sick leave hours to Employee’s PERS retirement account, in accordance with all applicable rules and regulations of PERS. Should Employee decline to contribute unused sick hours to Employee’s PERS retirement account, no “cash-out” or other compensation therefor will be provided to Employee.

(c) Administrative/Executive Leave. Employee shall be entitled to fifty-six (56) hours of administrative leave per year which shall be provided on the same terms and conditions as provided to the City’s other executive employees. On each anniversary of this Agreement, or in reasonable proximity to same as determined in the sole discretion of the City Manager but not to exceed two weeks, Employee shall be required to “cash out” any accrued but unused administrative leave at his/her then-current hourly rate of compensation. In the event of termination of this Agreement, Employee shall be entitled to payment for any unused Administrative Leave.

(3) Group Medical, Dental, Life Insurance. Employee (including Employee’s dependents, as applicable) will be eligible for health and welfare benefits and group insurance, as are provided under the City’s policies as are applicable to executive employees, according to the terms presently established and as may be changed from time to time. At the City’s expense, Employee shall receive a term life insurance policy in the amount of \$175,000.

(4) Social Security. The City shall pay Employee’s portion of Social Security payments in the same manner as the City currently pays on behalf of its other executive employees, subject to amendment from time to time.

(5) PERS Retirement. Employee shall be entitled to retirement benefits through the California Public Employees’ Retirement System (PERS) at the current formula and level of 2% @ 62 for the duration of this Agreement and any extensions thereof. Employee shall be responsible for paying the applicable employee contribution pursuant to PERS regulations. If any benefits enumerated hereunder are contrary to PERS regulations and/or applicable law, then those portions which so conflict will be deemed severed and the applicable law and/or regulations shall apply and shall be deemed to replace those portions which so conflict.

(6) Travel/Professional Development. For the good of the City and as provided for in the City Budget, the City shall pay the reasonable travel and subsistence expenses as are established by the City Council and amended from time to time, for Employee's professional and official travel, meetings, and occasions adequate to continue Employee's professional development and to pursue necessary and other functions for the City, as may be duly approved by the City Council. The City also agrees to pay for reasonable travel and subsistence expenses as authorized by City Council policy as may now or later exist or be amended, related to such short courses, institutes, and seminars that the City deems necessary for Employee's professional development. This section specifically contemplates, subject to City Manager approval but without further need for approval by the City Council, the City's payment for reasonable travel and subsistence expenses related to Employee's attendance and participation at conferences held by the International City/County Management Association, the Government Finance Officers' Association, the California League of Cities, American Planning Association and its California Chapter, the California Association for Local Economic Development, and the California City Management Foundation.

(7) Dues/Subscriptions. For the good of the City and as provided for in the City Budget, the City shall pay such professional dues and subscriptions as are necessary for Employee's continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement and for the good of the City, as may be approved by the City Council.

(8) Bonding. The City shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance by virtue of Employee's employment as directed by applicable ordinance, state law, the City, or the City Manager's request.

(9) Cell Phone. Given the "on-call" nature of the Classification as set forth above, Employer shall provide Employee with a "smartphone" and data plan that is appropriate for the needs of the Classification, consistent with City's Cell Phone Policy. Employee acknowledges that the "smartphone" is and shall remain the property of the City, that the "smartphone" is reserved exclusively for use in service to the City, and that Employee has no expectation of property or privacy in the "smartphone," or in the data transmitted through or saved on same.

(10) Other Fringe Benefits. Except as otherwise expressly provided in this Agreement; Employee shall be eligible for no other fringe benefits.

(11) The City reserves the right to enhance, reduce, terminate, and amend or to otherwise change its benefit programs at any time. Any such change to any benefit plan available to Employee, or in which Employee is enrolled pursuant to this Agreement shall apply to Employee, including any new or additional benefits or any reduction or elimination of benefits, without the need to amend this Agreement. In the event such change is only applicable to certain employees, if the change is applicable to executive employees, then those changes shall also apply to Employee.

10. TERMINATION OF AGREEMENT.

A. Termination without Cause. The City Manager may, in its sole and absolute discretion, terminate this Agreement prior to the expiration of the Term, pursuant to Chapter 2.04 of the Wasco Municipal Code. The City shall pay Employee for all services through the effective date of termination. Employee shall be paid for accrued and unused paid leave time, as may be applicable to leave time of that type under state law. In the event of termination by the City Manager, if the termination is not for “Cause” as defined below, Employee shall also receive, in specific exchange for Employee’s execution of a waiver of any and all claims against the City arising from Employee’s employment, Severance Pay equal to three months of COBRA premiums in an amount necessary to continue Employee’s enrollment in the plan in which Employee was enrolled at the time of termination, plus the lesser of the following (a) Employee’s salary for the remainder of the Term; or (b) three months’ salary. Notwithstanding the foregoing, under no circumstances shall Employee receive any amount in excess of the limitations provided in Government Code §§ 53260 – 53264, or other applicable law.

B. Termination for Cause. For purposes of this Agreement, the following grounds for termination shall be considered termination for cause. In the event of termination for cause, no Severance Pay will be issued to Employee.

1. Conviction of, or pleading of nolo contendere to, a felony;
2. Conviction of a misdemeanor arising out of Employee’s duties under this Agreement and involving a willful or intentional violation of law;
3. Willful abandonment of duties;
4. A pattern of repeated, willful and intentional failure to carry out the terms of this Agreement, including any materially significant and legally constituted policy decisions of the City;
5. Any material act or pattern of action of dishonesty, disclosure of confidential information, commission of any act of gross carelessness or misconduct, unjustifiable neglect of Employee’s duties under this Agreement; and/or
6. Any other action or inaction by Employee that materially and substantially impedes or disrupts the performance of the City or its organizational units, is detrimental to employee safety or public safety, violates properly established rules or procedures, adversely affects the reputation of the City, its officers or employees, or has a substantial and adverse effect on the City’s interests.

C. Abuse of Office: In the event that Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the City for any paid leave, cash settlement (including any monies paid hereunder), or any other outlay by the City on Employee’s behalf, as provided for by Government Code sections 53243-53243.4.

D. Termination Due to Disability. If, at the end of any calendar month during the term

of this Agreement, Employee is, and has been for the duration of the calendar month then ending, unable to perform the duties of the Classification due to mental or physical illness or injury, this Agreement, and Employee's employment thereunder may, at the discretion of the City Manager, be terminated.

E. Disputes. Except as otherwise mutually agreed, any dispute as to whether severance is excused under Section 7, Paragraph C, Sub-Paragraphs 4 and 5, above, shall be referred to arbitration before a single neutral arbitrator selected from a list of seven (7) arbitrators requested from the California State Mediation and Conciliation Service. The City will strike the first name, and the Parties will alternate striking names until one person is left who shall be designated as the arbitrator.

11. ENTIRE AGREEMENT. This Agreement sets forth the final, complete and exclusive agreement between the City and Employee relating to the employment of Employee by the City, subject to the City of Wasco's rules, regulations, and policies. Any prior discussions or representations by or between the Parties are merged into, and/or rendered null and void by, this Agreement. The foregoing notwithstanding, Employee understands and acknowledges that Employee's employment is subject to the City's generally applicable rules, policies, procedures, and regulations, including but not limited to those pertaining to employment matters, such as rules and regulations addressing equal employment opportunity, sexual harassment, and violence in the workplace.

12. REVIEW. Employee acknowledges that he/she has had the opportunity to review this Agreement and has conducted an independent review of the financial and legal effects of this Agreement, Employee acknowledges and agrees that Employee has been provided with the time, and has had the opportunity, to consult with others of Employee's own choosing, including but not limited to legal counsel, with regard to this Agreement and its effects. Employee acknowledges that any agreement not to do so was Employee's, and Employee's alone. Employee acknowledges and agrees that he/she has made an independent judgment regarding the financial and legal effects of this Agreement and has not relied on any representation by the City, or its officers, agents, or employees, other than those expressly set forth in this Agreement.

13. GOVERNING LAW. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California.

14. MUTUALLY DRAFTED. For purposes of California law, the City and Employee agree that both the City and Employee are the drafters of this Agreement and that any ambiguity herein will not be construed against either the City or Employee.

15. HEADINGS, CAPTIONS. The headings and captions used in this Agreement are inserted for reference purposes only and shall not be deemed to limit or affect in any way the meaning or interpretation of any of the provisions of this Agreement.

16. SEVERABILITY. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall

nevertheless remain in full force and effect in all other circumstances.

17. WAIVER. Waiver by any party of any breach of this Agreement by the other party, whether such waiver is express or implied, shall not be construed as a continuing waiver or consent to any subsequent breach of this Agreement on the part of the other party.

18. NO AMENDMENT EXCEPT IN WRITING. No amendments to this Agreement may be made except in writing, signed and dated by the City and Employee.

19. NOTICES. Any notice to Employer under this Agreement shall be given in writing to the City, either by personal service or by registered or certified mail, postage prepaid, addressed to the City at the following address: City Manager, City of Wasco, Wasco City Hall, 746 8th Street, Wasco, CA 93280. Any such notice to Employee shall be given in writing and, if mailed, shall be addressed to Employee at Employee's home address then shown in Employee's personnel file as maintained by the City. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the second business day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this section.

This Agreement, which consists of eight pages in nineteen (19) numbered sections, may be executed in counterparts, which together shall form an integrated Agreement. For purposes of this Agreement's execution, a facsimile, photocopied, or electronically transmitted signature shall be equally valid to an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

EMPLOYEE

CITY OF WASCO

Print Name

City Manager

Signature

Signature

Date: _____, 2021

Date: _____, 2021



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager

DATE: September 21, 2021

SUBJECT: Report and Adopt a Resolution Approving an Agreement by and between the City of Wasco and the County of Kern to Provide Fire Protection Services within the City of Wasco.

Recommendation:

Staff recommends the City Council to adopt a Resolution approving an agreement by and between the City of Wasco and the County of Kern to Provide Fire Protection Services within the City of Wasco.

Background:

The City of Wasco currently contracts with the County of Kern to Provide Fire Protection Services and is operating under an agreement effective July 1, 2017 through June 30, 2022. The proposed agreement would be effective for a period of six years, from July 1, 2022 through June 30, 2028.

Discussion:

The proposed agreement is very similar to the current 2017-2022 contract in regards to services rendered and staffing level. Substantial changes have been made to the method of determining the City's actual cost for these services.

As with our own recent updates to City Fee schedules, Kern County is seeking "cost recovery" for contracted fire services. In the past, individual contracts were negotiated with each City, the format varied and renewal cycles were not in sync. Most importantly, the formulae used to determine each city's fees were not necessarily consistent. Although no one is happy about the costs proposed by this new contract, in Staff's opinion the contracts are very consistent, better documented and for better or worse, provide a path to full cost recovery for the County over a gradual 6-year period rather than the shock of an immediate adjustment. See Page 6, Section 6.(G) for the phase-in methodology and the final page of the agreement for the proposed annual fee.

The agreement contains a 2% "inflator" each year (versus 2.1% currently), but also a mechanism to account for increasing Fire Fund revenues, should Wasco enjoy a spike in development and property values. The formula applies a discount for the ratio of City vs.

County response statistics (9.4%) and Wasco benefits from a recognition of mutual aid value due to our physical location in the County, resulting in an additional 15% discount.

The projected base contract costs are as follows:

FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28
\$564,390	\$610,624	\$668,213	\$737,474	\$818,720	\$912,375

Again, fire protection costs are high, but Staff believes this contract provides a predictable cost structure for the next several years and allows a reasonable period of time for the City to adjust to the County's 100% cost recovery model.

Fiscal Impact: The estimated cost for FY 2021-22 fire protection services under the 2017-2022 contract is \$540,245.00. The adopted budget for FY 2021-22 contains sufficient funds for this expenditure and requires no current budget action.

The costs proposed pursuant to the FY 2022-28 fire protection services currently being considered will occur in future budget years and require no current budget action.

Attachments:

1. Resolution Fire Protection Services Agreement
2. KCFD 2022-28 Fire Protection Services Agreement
3. KCFD 2022-28 Fire Protection Services Cost Methodology
4. KCFD 2017-22 Fire Protection Services Agreement

**RESOLUTION NO. 2021 -
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO APPROVING AN
AGREEMENT BY AND BETWEEN THE CITY OF WASCO AND THE COUNTY OF KERN TO
PROVIDE FIRE PROTECTION SERVICES WITHIN THE CITY OF WASCO.**

WHEREAS, The City of Wasco and County of Kern have entered into multiple agreements via resolutions and City Council actions whereby Kern County agreed to provide fire protection services to the City of Wasco on the terms and conditions therein and which is on file with the Clerk of Kern County's Board of Supervisors, and

WHEREAS, The County of Kern and City of Wasco have negotiated a new agreement to succeed the prior agreement entered into on July 1, 2017, and set to expire June 30, 2022.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Wasco as follows:

SECTION 1: Authorizes the City Manager to negotiate, subject to the City Attorney's review, the final terms, and conditions of the Agreement for Fire Protection Duties between the County of Kern and the City of Wasco.

SECTION 2: Authorizes the Mayor, City Manager, City Clerk, and City Attorney to sign said agreement.

-o0o-

I HEREBY CERTIFY that the foregoing Resolution No. 2021 - was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

ABSTAIN:

ABSENT:

GILBERTO REYNA,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco

THIS AGREEMENT, made and entered into on _____, by and between COUNTY OF KERN, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and CITY OF WASCO, a municipal corporation within COUNTY of Kern (hereinafter referred to as "CITY");

WITNESSETH:

WHEREAS, Government Code section 36501 provides that the government of a general law city shall be vested in the officers therein named and includes the designation of a fire chief; and

WHEREAS, Government Code section 38611 provides that the legislative body of a general law city shall establish a fire department for CITY, and that said fire department shall be under the charge of a chief who shall have had previous training and experience as a firefighter, and that the other members of said fire department shall consist of paid firefighters or such companies of call firefighters as the legislative body may determine; and

WHEREAS, Pursuant to the provisions of Health and Safety Code section 13143, Regulations of the State Fire Marshal have been adopted which are set forth in Chapter 1 of Title 19 of the California Code of Regulations; and

WHEREAS, Government Code section 51301 authorizes the Board of Supervisors to contract with a city within COUNTY and authorizes CITY legislative body to contract with COUNTY for the performance of city functions by appropriate county officers and employees; and

WHEREAS, Government Code section 51303 provides in part that: "COUNTY officers and employees named in the contract shall exercise within CITY all of the powers and duties conferred upon CITY officers or employees named in the contract"; and

WHEREAS, CITY Council of CITY desires that the functions of the Chief of the Fire Department of CITY, including enforcement of the regulations of the State Fire Marshal, shall be performed by the Chief of the Fire Department of COUNTY acting as the Fire Chief of CITY; and

WHEREAS, CITY and COUNTY have negotiated this Agreement to replace all previous and amended agreements.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between COUNTY and CITY as follows:

1. POWERS AND DUTIES OF COUNTY FIRE CHIEF AND COUNTY FIRE DEPARTMENT EMPLOYEES

(A) The Chief of the Kern County Fire Department and employees of COUNTY Fire Department shall exercise within CITY all of the powers and duties conferred upon a City Fire Chief of City Fire Department personnel, including reporting to CITY Council and enforcing the "Regulations of the State Fire Marshal."

(B) Fire prevention and suppression, emergency medical responses, rescues, hazardous materials responses, fire cause and arson investigation plus all COUNTY support services including, but not limited to, supervision, dispatching, training, equipment maintenance, supplies, and procurement, collectively referred to as "Services." Functions within CITY's boundaries shall be vested in COUNTY Fire Chief and employees of COUNTY Fire Department as may be designated by COUNTY Fire Chief. Such reassignment of resources shall have no effect on CITY'S Annual Fee for services.

(C) In the performance of their duties of prevention, control and suppression of fires, emergency medical responses, rescues, hazardous materials responses and fire investigation functions pursuant to this Agreement, the personnel of COUNTY shall have the powers and duties of the Chief of the Fire Department of CITY and shall perform said services in accordance with professional firefighting standards. In the event of a dispute between the parties as to these duties, functions or manner of performance of these duties and functions, determinations by COUNTY Fire Chief shall be final and conclusive between the parties.

(D) All engine companies assigned to CITY fire station(s) as listed in Section 5 (C) "SERVICE LEVEL" shall carry automatic defibrillators and their personnel shall be certified Emergency Medical Technician-Defibrillator.

(E) COUNTY will participate in and support community emergency preparedness, education, training, and exercises. COUNTY personnel will work with CITY to continue to provide public education programs currently offered by CITY. The scope and specific programs may be modified by COUNTY and CITY after subsequent evaluation. CITY shall retain responsibility for CITY's internal emergency management and related programs, as well as communication and coordination with COUNTY's Emergency Operations Center (EOC), when activated.

(F) It is expressly understood that in the performance of the services herein provided for, COUNTY shall be, and is, an independent contractor and is not an agent or employee of CITY. COUNTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, assignment, compensation and discharge of all persons employed by COUNTY and assisting in the performance of services hereunder. COUNTY shall be solely responsible for all matters relating to the payment of its employees including, but not limited to, compliance with social security, workers' compensation, withholding, and all regulations governing such matters.

(G) COUNTY shall provide as necessary, fire inspection services as are provided by COUNTY Fire Department to residents of the unincorporated area of COUNTY of Kern.

(H) County Fire Department Personnel shall make a good faith effort to attend a City Council meeting once every month of the calendar year.

2. PLANS REVIEW, INSPECTIONS AND CODE ENFORCMENT FUNCTIONS

Solely for the purpose of enforcing or assisting in the enforcement of the regulations of the State Fire Marshal, as provided for in Chapter 1 of Title 19 of the California Code of Regulations, COUNTY will perform the following specific functions on behalf of CITY:

(A) Plan check and approve or disapprove all building, electrical, and plumbing plans for all occupancies covered by Chapter 1 of Title 19 of the California Code of Regulations before a building permit is issued by CITY and construction started.

(B) Plan check and approve or disapprove any changes in approved plans on all the above-described occupancies for new construction, alterations to existing buildings, and any changes of occupancy.

(C) Make joint final inspection with building inspection personnel of CITY on all of the above-described occupancies. No certification of lights, gas, or occupancy shall be issued, nor business license granted until joint approval by COUNTY and CITY after joint final inspection.

COUNTY will perform these functions without an increase in the Annual Fee (as describe in Paragraph 7), provided that fees for these services in the amounts established by COUNTY are paid to COUNTY pursuant to Paragraph 10 and provided further that the services do not require that COUNTY increase staffing level set forth in Paragraph 5(c).

3. FIRE HYDRANTS AND WATER SUPPLY

(A) CITY, as its sole and separate obligation, shall continue to provide a system of fire hydrants and water supply for fire prevention and suppression within CITY. CITY shall cooperate with and assist COUNTY in requiring that CITY Water Department or other local water purveyors provide at least minimum water fire flows as required by the California Fire Code and hydrants for fire protection purposes within CITY.

(B) COUNTY shall annually inspect all fire hydrants within CITY to ensure that fire hydrants are mechanically operable and capable of delivering water. COUNTY shall notify CITY Water Department or other local water purveyors, in writing, of any maintenance requirements as soon as possible after such inspections and at any other time COUNTY becomes aware of maintenance or repair requirements. COUNTY shall not be liable to pay CITY Water Department or any other water purveyors for hydrant installation, painting to COUNTY specifications, repair, maintenance, or rental fees or any other related costs or expenses.

4. ROUTING OF EMERGENCY CALLS

(A) The immediate transference of 9-1-1 calls to COUNTY by CITY's Public Safety Answering Point (PSAP) shall be performed on all fire, rescue, hazardous materials, and emergency medical incidents without cost to COUNTY. CITY shall be responsible for all costs associated with connecting ring down circuits from its PSAP to COUNTY's circuit.

(B) COUNTY shall provide to CITY annually, and upon request, statistical response information reports for emergency incident activity and response times.

5. SERVICE LEVEL

(A) Nothing in this Agreement precludes the future expansion, closure, consolidation, or relocation of the fire stations referenced herein if such action is mutually beneficial to and agreed upon by both CITY and COUNTY.

(B) Any agreed-upon adjustments in staffing may cause adjustments in the determination of the Annual Fee.

(C) COUNTY will provide to CITY a minimum assigned service level based on daily staffing (24-7) of one (1) Captain, one (1) Engineer and one (1) Firefighter. Fire personnel assigned will be comparably equipped and trained as other similar positions within COUNTY Fire Department. COUNTY will also provide such "backup" or additional service as reasonably necessary in accordance with professional firefighting standards, including, but not limited to those situations where firefighters assigned to the CITY are utilized outside CITY limits on emergencies.

(D) Any request by CITY for increased Service Levels shall be communicated to COUNTY no later than January 1st prior to implementation the following fiscal year, subject to approval by COUNTY and in accordance with Section 12 "POTENTIAL CHANGES IN SERVICE LEVEL" herein.

6. COST ALLOCATION METHODOLOGY

The Annual Fee in this Agreement is based upon CITY incorporated area boundaries as of the effective date of this Agreement and minimum service level set forth in Section 5. A change in the incorporated area boundaries of the CITY shall be considered a potential change in service subject to Section 12 "POTENTIAL CHANGES IN SERVICE LEVEL" herein. The methodology for cost allocation is based on the methodology and phased implementation approved by the Board of Supervisors of the COUNTY on November 10, 2020. This methodology and cost allocation is consistent with that recommended in the Analysis of Cost Allocation for Contract Cities dated June 18, 2020 and prepared by The Natelson Dale Group, Inc. ("TNDG Analysis") and includes the following:

(A) Direct Costs - Those costs include fire department direct station cost to operate a COUNTY fire station in an incorporated CITY; and include the following:

- i. Average cost for station assigned uniformed personnel and pro rata shares of Battalion Chiefs, including salary and all benefits but not including overtime to maintain constant staffing based on fiscal year 2021-2022 costs.
- ii. Equipment cost allocation of \$42,500 per year per station.
- iii. Actual cost of utilities for fiscal year 2019-2020.
- iv. Fire station maintenance cost allocation of \$10,000 per year per station for stations owned by County.

(B) Indirect Cost - Calculation of a "fair share" administrative/overhead cost factor to account for indirect costs associated with providing fire protection services to participating CITY. For the duration of this Agreement the Indirect Cost rate shall be calculated as 10% of the Direct Costs.

(C) The Direct and Indirect Costs are then added together to identify the "Total Cost".

(D) Each year after the first year of this Agreement, Total Cost are determined as the prior year's Total Cost plus 2%. This annual adjustment to the Total Cost is provided so that future years' costs to CITY under this Agreement can be fixed and is provided in lieu of the "true up" calculation recommended in the TNDG Analysis and to keep pace with future cost increases including but not limited to inflation.

(E) CITY's Total Cost - Fire stations in the contract CITY primarily serve their host CITY but also respond to calls in unincorporated areas of COUNTY. Therefore, it is appropriate for the COUNTY to pay for a portion of the costs of these stations. To account for the countywide benefit of CITY contract stations, Total Cost for these stations shall be discounted by a factor that considers the number of incidents that each contract CITY station(s) responds outside of the CITY's incorporated area. These incidents have been analyzed as part of developing the TNDG Analysis and for the term of this Agreement a discount for COUNTY incidents in the amount of 9.40% of Total Cost shall be utilized to determine "CITY's Total Cost".

Additionally, due to the strategic location of the station in Wasco, within the context of the countywide mutual aid system, an additional discount of 15% of Total Cost shall be applied to arrive at CITY's Total Cost.

(F) Fire Fund –

- i. The amount of Fire Fund property tax revenues collected in fiscal year 2020-21 within the CITY and retained by the COUNTY Fire Department are then credited against the CITY's Total Cost to determine the "CITY's Net Total Cost".
- ii. Each year of this Agreement the actual Fire Fund Property tax revenues collected within the CITY and retained by the COUNTY Fire Department will be compared to the amount of Fire Fund Property tax revenues collected within the CITY and retained by the COUNTY Fire Department in fiscal year 2020-21. If the actual amounts collected for that year are greater than the amounts from 2020-21, the difference will be credited toward the CITY's Annual Fee in the second quarter of the following year. If the actual amounts

collected for that year are less than the amounts from 2020-21, the difference will be added to the CITY's Annual Fee in the second quarter of the following year.

(G) The new contract methodology being implemented through this Agreement will be phased-in over a six-year period. Each year the difference between the CITY's Net Total Cost under this Agreement and the CITY's cost for COUNTY fire services in fiscal year 2021-22 ("Base Year Cost") is then multiplied by following applicable percentage below and added to the Base Year Cost to determine the amount of the Annual Fee due to COUNTY under this Agreement:

<u>Fiscal Year</u>	<u>Phase-In Percentage</u>
2022-23	16.67%
2023-24	33.33%
2024-25	50.00%
2025-26	66.67%
2026-27	83.33%
2027-28	100.00%

(H) Negative CITY's Net Total Cost – Where the CITY's Net Total Cost is less than the Fire Fund property tax revenues collected within the CITY, the difference shall be designated as "Excess Fire Funds". Excess Fire Funds shall be retained by the COUNTY Fire Department and be expended only on fire related operations and capital including, but not limited to, future fire service needs, fire apparatus, major maintenance, or capital facility construction that are of mutual benefit to the CITY and COUNTY as agreed upon by the CITY Manager and the Fire Chief. If Excess Fire Funds are used to replace existing fire apparatus, major maintenance, capital facility construction or repairs, in excess of five thousand dollars (\$5,000.00), per item or project, on existing facilities, CITY shall be entitled to a credit of the same amount to future Annual Fee(s) under this agreement or any successor agreement.

(I) All amounts collected by COUNTY from CITY under this Agreement for the Equipment Cost Allocation contained in Section 6(A)(ii) shall be accumulated and utilized by COUNTY for new or replacement Kern County Fire Department vehicles and equipment primarily serving, and housed within, CITY.

7. COMPENSATION

CITY will compensate COUNTY for the performance of Services under this Agreement as follows:

(A) The Annual Fee owed by CITY to COUNTY for the performance of duties under this Agreement is included as "Exhibit A" to this Agreement.

(B) An annual adjustment shall be made in the second quarter of each year of this Agreement based on the actual amount of Fire Fund property tax revenues collected within the CITY and retained by the COUNTY Fire Department, as described in Section 6(F)(ii) of this Agreement.

(C) Any increases in costs necessitated or mandated by legislative or judicial decisions or actions, or by CITY's request for increases in service level, other than penalties or damages due to negligence of COUNTY, shall be due in the fiscal year that they occur.

(D) Average Salaries and Benefit Costs will be used as the basis for costs to be billed to the CITY for any additional personnel requested by the CITY.

(E) COUNTY shall be responsible for all costs and expenses incident to the performance of the services for CITY, including but not limited to, all costs of equipment provided by COUNTY, all fees, fines, licenses, bonds or taxes required of or imposed against COUNTY and all other of COUNTY'S costs of doing business. Except as expressly provided for herein, CITY shall not be responsible for any expense incurred by COUNTY in performing services for the CITY, unless such expenses are incurred due to CITY's negligence.

8. FIRE FUND RETENTION

In the event CITY annexes additional areas from COUNTY, COUNTY shall continue to receive the Fire Fund revenues associated with those additional areas. Those additional Fire Fund revenues shall not be deducted from the CITY's TOTAL COSTS until the next contract cycle when COUNTY'S costs and incidents in the annexed area are reviewed and factored into this Agreement as necessary to serve the new incorporated boundaries.

9. BILLING & PAYMENT

(A) In consideration of the covenants contained herein, CITY shall pay to COUNTY the costs specified in Section 6 "COST ALLOCATION METHODOLOGY" and Section 7 "COMPENSATION" herein over the term of the Agreement. The Kern County Fire Department shall, within thirty (30) days of the close of each calendar year quarter, invoice CITY for one fourth of the amount to be paid annually. CITY shall pay COUNTY within forty-five (45) days of receipt of the invoice. Invoices and general notices shall be sent to CITY at:

City of Wasco
746 8th Street
Wasco, CA 93280

Payments shall be sent to:

Kern County Fire Department
5642 Victor Street
Bakersfield, CA 93308

Either party shall notify the other in writing of an address change.

(B) Interest shall be charged to CITY for any amount invoiced by COUNTY for which payment is received by COUNTY after the due date (late payment). The interest rate on any late payment shall be established as the pooled treasury rate as earned by COUNTY, as of the first day payment is late. The period for computing this interest shall commence the day following the payment due date and end the date of receipt of payment by COUNTY. The interest payment shall be computed as follows:

$$\frac{\text{No. of Days Late}}{365 \text{ Days}} \times \text{pooled treasury rate} \times \$ \text{Amount of Payment} = \text{Late Payment Interest Charge}$$

(C) In the event that a billing/payment dispute arises between COUNTY and CITY, the parties will negotiate in good faith to resolve the dispute and the following procedures will be taken to resolve the dispute:

1. The dispute will be specified, in writing, and presented to COUNTY jurisdictional Deputy Fire Chief if a CITY dispute, or to CITY MANAGER if a COUNTY dispute, within thirty (30) days of the receipt of a disputed invoice or disputed payment. CITY shall pay any disputed invoice "under protest."

2. If COUNTY and CITY cannot fully resolve the dispute within ninety (90) days of receipt of written notification of this dispute (impasse), the impasse will be sent to an independent arbitrator for resolution. Said arbitrator shall be selected jointly by CITY and COUNTY within forty-five (45) days of impasse and shall be paid for equally by CITY and COUNTY. If COUNTY and CITY cannot agree on an arbitrator, each party shall, at its own expense, retain an arbitrator within thirty (30) days after the jointly selected arbitrator should have been selected. These two arbitrators will within thirty (30) days mutually select a third arbitrator. The mutually agreed-upon arbitrator will resolve the matter within thirty (30) days after his/her selection. COUNTY and CITY shall share equally the cost of the third arbitrator. The arbitrator's resolution of the impasse shall be final and binding.

If COUNTY prevails in arbitration, all money owed and not paid to COUNTY will be forwarded to the mailing address identified in Section 9 "BILLING & PAYMENT", herein, within thirty (30) calendar days from the date of the issuance of the arbitrator's decision. In addition, CITY will be assessed and pay the interest payment amount as calculated for an interest payment in Section 9(B) of this Agreement.

If CITY prevails in arbitration and has paid COUNTY the disputed amount, a refund to CITY will be forwarded to the mailing address identified in Section 9(A), herein, within thirty (30) calendar days from the date of the issuance of the arbitrator's decision. In addition, COUNTY will pay to CITY the interest as calculated for an interest payment, as identified in Section 9(B) of this Agreement.

10. FEES

All revenues generated from fees established or implemented by COUNTY shall be COUNTY revenues. Fees of any nature collected by CITY on behalf of COUNTY shall

be passed through to COUNTY by CITY as COUNTY revenues. CITY shall be authorized to retain a five percent (5%) administrative charge for any fees collected on behalf of COUNTY. Any fees charged and collected by CITY subsequent to the commencement date of service shall remain as revenues of CITY provided that such fees are not identified as fees imposed by COUNTY. COUNTY shall be authorized to retain a five percent (5%) administrative charge for any fees collected by COUNTY on behalf of CITY. Excluding any State, Federal, or judicially mandated Programs or fees, any fees established by COUNTY to be imposed in CITY after the commencement date of service shall require the prior approval of CITY, which shall not be unreasonably withheld. After giving written notice to COUNTY, CITY may at any time choose to pay, in part or whole, any fees levied by COUNTY in lieu of imposition of the fees upon the citizens of CITY.

11. COST RECOVERY

In the event that an incident occurs within CITY while this Agreement is in effect during which COUNTY may be required to deploy a substantial number of COUNTY apparatus and personnel to such incident, COUNTY reserves the right to pursue cost recovery at its sole discretion against the party that caused the incident but not against CITY. In the event CITY pursues cost recovery for COUNTY resources deployed to such an incident, CITY shall promptly pay to COUNTY all such COUNTY costs recovered by CITY less the cost of CITY'S recovery efforts. Costs for COUNTY resources paid for by CITY through this Agreement as detailed in Section 5(C) "SERVICE LEVEL" herein and deployed to such an incident shall not be recoverable by COUNTY from CITY.

12. POTENTIAL CHANGES IN SERVICE LEVEL

If public safety requires an increase in staffing levels during the term of this Agreement, CITY and COUNTY will renegotiate the annual compensation paid to COUNTY.

13. FIRE STATION EXPANSION/CONSTRUCTION

During the term of this Agreement, CITY and COUNTY agree to commence discussions regarding the need for any future expanded fire service throughout CITY based on CITY's future plans. CITY and COUNTY agree to explore reasonable solutions for same, such that the parties formulate a master plan to address future fire protection resource requirements, including any future fire station construction projects or capital equipment acquisitions, and the allocation of costs between CITY and COUNTY.

14. TERM OF AGREEMENT

The term of this Agreement will begin on July 1, 2022 and shall continue in full force and effect until June 30, 2028 unless otherwise terminated.

15. MODIFICATIONS TO AGREEMENT

(A) A review of the Agreement terms may be initiated at any time by either party, upon written notice to the other, and modifications made to this Agreement upon written

consent of both parties, which consent shall not be unreasonably withheld or delayed. The parties agree to negotiate in good faith and deal fairly with respect to performance under this Agreement and to any proposed modifications to this Agreement.

(B) This Agreement may be modified only in writing and with the approval of both CITY and COUNTY.

16. TERMINATION

(A) Either party may terminate this Agreement without cause by providing to the other party in writing at least twelve (12) months advance notice of its intent to terminate; and any such notice of termination by COUNTY shall be served upon CITY by delivery of said notice either in person or by registered mail to the CITY Clerk; any such notice of termination shall be served upon COUNTY by delivery of said notice either in person or by registered mail to the Clerk of the Board of Supervisors.

(B) In the event this Agreement is terminated, all real property, equipment, fire apparatus, personal property, and supplies, contained in COUNTY fire station(s) shall remain the sole property of COUNTY.

(C) In the event CITY detaches from COUNTY, any unpaid Annual Fee Limitation excess together with any outstanding Annual Fee payments due by CITY as of the effective date of the detachment shall be due and payable to COUNTY no later than the effective date of detachment. Should a credit be due CITY from COUNTY, a refund shall be paid to CITY no later than the effective date of detachment.

17. INDEMNIFICATION

(A) Neither party will be liable to the other party for any damage, liability claim or cause of action for damage to, or destruction of, property or for injury to or death of persons arising solely from any act or omission of the other party's officers, agents and employees.

(B) CITY will indemnify, hold harmless, and defend (upon the written request of COUNTY) COUNTY, its officers, employees, and agents from any and all loss, damage, liability claim or cause of action of every nature whatsoever for the physical damage to or destruction of property, including the property of COUNTY or physical injury to or death of any person, including COUNTY'S officers, employees or agents, which may arise out of any negligent act or omission of CITY, its officers, employees or agents.

(C) COUNTY will indemnify, hold harmless and defend (upon the written request of CITY) CITY, its officers, employees, and agents from any and all loss, damage, liability, claim or cause of action of every nature whatsoever for physical injury to or death of any person, including CITY'S officers, employees and agents, which may arise out of any negligent act or omission of COUNTY, its officers, employees or agents.

(D) The party against whom any claim arising from this Agreement is filed will give prompt notice of the filing of the claim to the other party.

18. INSURANCE

Both parties represent that they are self-insured for all exposure including bodily injury and property damage. Both parties agree to provide proof of self-insurance upon demand to include coverage above any self-insured retention.

19. WAIVER

No waiver of a breach of any provision of this Agreement will constitute a waiver of any other breach, or of such provision. Failure of CITY or COUNTY to enforce at any time, or from time-to-time, any provision of this Agreement will not be construed as a waiver thereof. The remedies herein reserved will be cumulative and additional to any other remedies in law or equity.

20. PARTIAL INVALIDITY

Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States, of the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions will be deemed severable and will not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the Agreement which the parties intended to enter into in the first instance.

21. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this Agreement will be of no force or effect excepting a subsequent modification in writing, signed by both parties.

22. COUNTY RECORDS

At any time during normal business hours, upon the request of CITY, COUNTY will make available for examination all of its existing records with respect to matters covered by this Agreement for purposes of audit, examination, or to make copies of such records, exclusive of confidential personnel files.

23. NOTICES

All notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice or may be served by certified mail, return receipt requested, to the following addresses:

COUNTY:

County Fire Chief
5642 Victor Street

CITY:

City Manager, City of Wasco
746 8th Street

Bakersfield, CA 93308

Wasco, CA 93280

IN WITNESS WHEREOF, CITY and COUNTY have caused this Agreement to be executed by their authorized agents.

APPROVED AS TO CONTENT:

By: _____
City Manager
City of Wasco

By: _____
Aaron Duncan, Fire Chief
Kern County

APPROVED AS TO FORM:

By: _____
City Attorney
City of Wasco

By: _____
Gurujodha Khalsa, Deputy County Counsel
Kern County

“CITY”

“COUNTY”

By: _____
Mayor
City of Wasco

By: _____
Phillip Peters, Chairman
Kern County Board of Supervisors

Attest:

By: _____
City Clerk
City of Wasco

By: _____
Kathleen Krause, Clerk of the Board
County of Kern

Exhibit A

Annual Fee

City	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28
Wasco	\$564,390	\$610,624	\$668,213	\$737,474	\$818,720	\$912,375

YEAR 1										
City	Station	Total Cost (Direct + Indirect)	Discount Factor	City's Net Total Cost	Fire Fund Property Tax Revenue	Net Station Costs - Year 1	Current Contract Cost (FY 20-21)		Year 1 - Phase in (16.67%)	Increase
Arvin	54	\$2,229,468	18.43%	\$1,818,628	536,122.80	\$1,282,505	\$658,142		\$762,223	\$624,363
Delano	34 & 37	\$4,338,228	25.09%	\$3,249,842	-	\$3,249,842	2,468,014		\$2,598,345	\$781,828
Maricopa	22	\$2,198,931	32.26%	\$1,489,599	35,517.06	\$1,454,081	26,801		\$264,729	\$1,427,280
McFarland	33	\$2,187,604	19.98%	\$1,750,609	345,998.20	\$1,404,611	437,698		\$598,882	\$966,913
Ridgecrest	74 & 77	\$4,322,964	24.47%	\$3,265,234	2,118,371.21	\$1,146,863	268,812		\$415,183	\$878,051
Shafter	32	\$2,184,476	26.67%	\$1,601,949	1,887,822.47	(\$285,873)	(238,637)		(\$285,873)	(\$47,236)
Taft	21	\$2,205,381	49.13%	\$1,121,873	5,070.15	\$1,116,803	488,758		\$593,453	\$628,045
Tehachapi	12	\$2,163,086	17.66%	\$1,781,008	696,358.54	\$1,084,650	18,285		\$196,048	\$1,066,365
Wasco	31	\$2,182,840	24.40%	\$1,650,156	909,530.86	\$740,625	529,134		\$564,390	\$211,491
Total		\$24,012,978		\$17,728,898	6,534,791.29	\$11,194,107	\$4,657,007		\$5,707,380	\$6,537,100

YEAR 2										
City	Station	Total Cost (Direct + Indirect)	2% Escalation	Discount Factor	City's Net Total Cost	Fire Fund Property Tax Revenue	Net Station Costs - Year 2		Year 2 - Phase in (33.33%)	Increase from Year 1
Arvin	54	\$2,229,468	\$2,274,058	18.43%	\$1,855,001	536,122.80	\$1,318,878		\$878,365	\$116,142
Delano	34 & 37	\$4,338,228	\$4,424,993	25.09%	\$3,314,838	-	\$3,314,838		\$2,750,261	\$151,916
Maricopa	22	\$2,198,931	\$2,242,910	32.26%	\$1,519,391	35,517.06	\$1,483,873		\$512,443	\$247,715
McFarland	33	\$2,187,604	\$2,231,356	19.98%	\$1,785,622	345,998.20	\$1,439,623		\$771,640	\$172,757
Ridgecrest	74 & 77	\$4,322,964	\$4,409,423	24.47%	\$3,330,539	2,118,371.21	\$1,212,168		\$583,232	\$168,049
Shafter	32	\$2,184,476	\$2,228,166	26.67%	\$1,633,988	1,887,822.47	(\$253,834)			\$32,039
Taft	21	\$2,205,381	\$2,249,489	49.13%	\$1,144,310	5,070.15	\$1,139,240		\$705,564	\$112,111
Tehachapi	12	\$2,163,086	\$2,206,348	17.66%	\$1,816,628	696,358.54	\$1,120,270		\$385,577	\$189,529
Wasco	31	\$2,182,840	\$2,226,497	24.40%	\$1,683,159	909,530.86	\$773,628		\$610,624	\$46,234
Total		\$24,012,978	\$24,493,238		\$18,083,476	6,534,791.29	\$11,548,685		\$7,197,705	\$1,236,492

YEAR 3										
City	Station	Total Cost (Direct + Indirect)	2% Escalation	Discount Factor	City's Net Total Cost	Fire Fund Property Tax Revenue	Net Station Costs - Year 3		Year 3 - Phase in (50%)	Increase from Year 2
Arvin	54	\$2,274,058	\$2,319,539	18.43%	\$1,892,101	536,122.80	\$1,355,978		\$1,007,060	\$128,695
Delano	34 & 37	\$4,424,993	\$4,513,493	25.09%	\$3,381,135	-	\$3,381,135		\$2,924,575	\$174,314
Maricopa	22	\$2,242,910	\$2,287,768	32.26%	\$1,549,778	35,517.06	\$1,514,261		\$770,531	\$258,088
McFarland	33	\$2,231,356	\$2,275,983	19.98%	\$1,821,334	345,998.20	\$1,475,336		\$956,517	\$184,877
Ridgecrest	74 & 77	\$4,409,423	\$4,497,612	24.47%	\$3,397,150	2,118,371.21	\$1,278,778		\$773,795	\$190,563
Shafter	32	\$2,228,166	\$2,272,729	26.67%	\$1,666,668	1,887,822.47	(\$221,154)			\$32,680
Taft	21	\$2,249,489	\$2,294,478	49.13%	\$1,167,196	5,070.15	\$1,162,126		\$825,442	\$119,878
Tehachapi	12	\$2,206,348	\$2,250,475	17.66%	\$1,852,961	696,358.54	\$1,156,602		\$587,444	\$201,867
Wasco	31	\$2,226,497	\$2,271,027	24.40%	\$1,716,822	909,530.86	\$807,291		\$668,213	\$57,589
Total		\$24,493,238	\$24,983,103		\$18,445,146	6,534,791.29	\$11,910,354		\$8,513,576	\$1,348,551

YEAR 4										
City	Station	Total Cost (Direct + Indirect)	2% Escalation	Discount Factor	City's Net Total Cost	Fire Fund Property Tax Revenue	Net Station Costs - Year 4		Year 4 - Phase in (66.67%)	Increase from Year 3
Arvin	54	\$2,319,539	\$2,365,930	18.43%	\$1,929,943	536,122.80	\$1,393,820		\$1,148,618	\$141,559
Delano	34 & 37	\$4,513,493	\$4,603,762	25.09%	\$3,448,758	-	\$3,448,758		\$3,121,876	\$197,301
Maricopa	22	\$2,287,768	\$2,333,523	32.26%	\$1,580,774	35,517.06	\$1,545,257		\$1,039,155	\$268,624
McFarland	33	\$2,275,983	\$2,321,502	19.98%	\$1,857,761	345,998.20	\$1,511,763		\$1,153,777	\$197,260
Ridgecrest	74 & 77	\$4,497,612	\$4,587,564	24.47%	\$3,465,093	2,118,371.21	\$1,346,721		\$987,454	\$213,659
Shafter	32	\$2,272,729	\$2,318,184	26.67%	\$1,700,002	1,887,822.47	(\$187,821)			\$33,333
Taft	21	\$2,294,478	\$2,340,368	49.13%	\$1,190,540	5,070.15	\$1,185,470		\$953,256	\$127,814
Tehachapi	12	\$2,250,475	\$2,295,484	17.66%	\$1,890,020	696,358.54	\$1,193,662		\$801,909	\$214,465
Wasco	31	\$2,271,027	\$2,316,447	24.40%	\$1,751,159	909,530.86	\$841,628		\$737,474	\$69,261
Total		\$24,983,103	\$25,482,765		\$18,814,048	6,534,791.29	\$12,279,257		\$9,943,519	\$1,463,276

YEAR 5										
City	Station	Total Cost (Direct + Indirect)	2% Escalation	Discount Factor	City's Net Total Cost	Fire Fund Property Tax Revenue	Net Station Costs - Year 5		Year 5 - Phase in (83.33%)	Increase from Year 4
Arvin	54	\$2,365,930	\$2,413,248	18.43%	\$1,968,541	536,122.80	\$1,432,419		\$1,303,347	\$154,728
Delano	34 & 37	\$4,603,762	\$4,695,838	25.09%	\$3,517,733	-	\$3,517,733		\$3,342,745	\$220,869
Maricopa	22	\$2,333,523	\$2,380,194	32.26%	\$1,612,389	35,517.06	\$1,576,872		\$1,318,475	\$279,320
McFarland	33	\$2,321,502	\$2,367,933	19.98%	\$1,894,916	345,998.20	\$1,548,918		\$1,363,677	\$209,901
Ridgecrest	74 & 77	\$4,587,564	\$4,679,315	24.47%	\$3,534,394	2,118,371.21	\$1,416,023		\$1,224,783	\$237,329
Shafter	32	\$2,318,184	\$2,364,548	26.67%	\$1,734,002	1,887,822.47	(\$153,821)			\$34,000
Taft	21	\$2,340,368	\$2,387,175	49.13%	\$1,214,351	5,070.15	\$1,209,281		\$1,089,170	\$135,914
Tehachapi	12	\$2,295,484	\$2,341,394	17.66%	\$1,927,821	696,358.54	\$1,231,462		\$1,029,225	\$227,317
Wasco	31	\$2,316,447	\$2,362,776	24.40%	\$1,786,182	909,530.86	\$876,651		\$818,720	\$81,246
Total		\$25,482,765	\$25,992,420		\$19,190,329	6,534,791.29	\$12,655,538		\$11,490,143	\$1,580,624

YEAR 6										
City	Station	Total Cost (Direct + Indirect)	2% Escalation	Discount Factor	City's Net Total Cost	Fire Fund Property Tax Revenue	Net Station Costs - Year 6		Year 6 - Phase in (100%)	Increase from Year 5
Arvin	54	\$2,413,248	\$2,461,513	18.43%	\$2,007,912	536,122.80	\$1,471,790		\$1,471,790	\$168,443
Delano	34 & 37	\$4,695,838	\$4,789,754	25.09%	\$3,588,088	-	\$3,588,088		\$3,588,088	\$245,343
Maricopa	22	\$2,380,194	\$2,427,798	32.26%	\$1,644,637	35,517.06	\$1,609,120		\$1,609,120	\$290,645
McFarland	33	\$2,367,933	\$2,415,291	19.98%	\$1,932,814	345,998.20	\$1,586,816		\$1,586,816	\$223,139
Ridgecrest	74 & 77	\$4,679,315	\$4,772,901	24.47%	\$3,605,082	2,118,371.21	\$1,486,711		\$1,486,711	\$261,928
Shafter	32	\$2,364,548	\$2,411,839	26.67%	\$1,768,682	1,887,822.47	(\$119,141)			\$34,680
Taft	21	\$2,387,175	\$2,434,919	49.13%	\$1,238,638	5,070.15	\$1,233,568		\$1,233,568	\$144,398
Tehachapi	12	\$2,341,394	\$2,388,222	17.66%	\$1,966,377	696,358.54	\$1,270,019		\$1,270,019	\$240,793
Wasco	31	\$2,362,776	\$2,410,032	24.40%	\$1,821,905	909,530.86	\$912,375		\$912,375	\$93,655
Total		\$25,992,420	\$26,512,269		\$19,574,136	6,534,791.29	\$13,039,345		\$13,158,486	\$1,703,023

CITY AGREEMENT NO.: 2017-24
COUNTY AGREEMENT NO.: 501-2017

**AGREEMENT BETWEEN THE CITY OF WASCO AND THE COUNTY OF KERN
FOR COUNTY OF KERN FIRE PROTECTION DUTIES
AND
ENFORCEMENT OF STATE FIRE MARSHAL REGULATIONS
(COUNTY OF KERN-CITY OF WASCO)**

THIS AGREEMENT, made and entered into on this 1st day of JULY, 2017 by and between COUNTY OF KERN, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and CITY OF WASCO, a municipal corporation within COUNTY of Kern (hereinafter referred to as "CITY");

WITNESSETH:

WHEREAS, Government Code section 36501 provides that the government of a general law city shall be vested in the officers therein named and includes the designation of a fire chief; and

WHEREAS, Government Code section 38611 provides that the legislative body of a general law city shall establish a fire department for CITY, and that said fire department shall be under the charge of a chief who shall have had previous training and experience as a firefighter, and that the other members of said fire department shall consist of paid firefighters or such companies of call firefighters as the legislative body may determine; and

WHEREAS, Pursuant to the provisions of Health and Safety Code section 13143, Regulations of the State Fire Marshal have been adopted which are set forth in Chapter 1 of Title 19 of the California Code of Regulations; and

WHEREAS, Government Code section 51301 authorizes the Board of Supervisors to contract with a city within COUNTY and authorizes CITY legislative body to contract with COUNTY for the performance of city functions by appropriate county officers and employees; and

WHEREAS, Government Code section 51303 provides in part that: "COUNTY officers and employees named in the contract shall exercise within CITY all of the powers and duties conferred upon CITY officers or employees named in the contract"; and

WHEREAS, CITY Council of CITY desires that the functions of the Chief of the Fire Department of CITY, including enforcement of the regulations of the State Fire Marshal, shall be performed by the Chief of the Fire Department of COUNTY acting as the Fire Chief of CITY; and

WHEREAS, COUNTY and CITY have negotiated this Agreement to replace all previous and amended agreements.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between COUNTY and CITY as follows:

1. POWERS AND DUTIES OF COUNTY FIRE CHIEF AND COUNTY FIRE DEPARTMENT EMPLOYEES:

(A) The Chief of the Kern County Fire Department and employees of COUNTY Fire Department shall exercise within CITY all of the powers and duties conferred upon a City Fire Chief of City Fire Department personnel, including reporting to CITY Council and enforcing the "Regulations of the State Fire Marshal."

(B) Fire prevention and suppression, emergency medical responses, rescues, hazardous materials responses, fire cause and arson investigation plus all COUNTY support services including, but not limited to, supervision, dispatching, training, equipment maintenance, supplies, and procurement, collectively referred to as "services." Functions within CITY's boundaries shall be vested in COUNTY Fire Chief and employees of COUNTY Fire Department as may be designated by COUNTY Fire Chief. Such reassignment of resources shall have no effect on CITY'S Annual Fee for services.

(C) In the performance of their duties of prevention, control and suppression of fires, emergency medical responses, rescues, hazardous materials responses and fire investigation functions pursuant to this Agreement, the personnel of COUNTY shall have the powers and duties of the Chief of the Fire Department of CITY and shall perform said services in accordance with professional firefighting standards. In the event of a dispute between the parties as to these duties, functions or manner of performance of these duties and functions, determinations by COUNTY Fire Chief shall be final and conclusive between the parties.

(D) All engine companies assigned to CITY fire station(s) as listed in Section 5 (C) "SERVICE LEVEL" shall carry automatic defibrillators and their personnel shall be certified Emergency Medical Technician-Defibrillator.

(E) COUNTY will participate in and support community emergency preparedness, education, training, and exercises. COUNTY personnel will work with CITY to continue to provide public education programs currently offered by CITY. The scope and specific programs may be modified by COUNTY and CITY after subsequent evaluation. CITY shall retain responsibility for CITY's internal emergency management and related programs, as well as communication and coordination with COUNTY's Emergency Operations Center (EOC), when activated.

(F) It is expressly understood that in the performance of the services herein provided for, COUNTY shall be, and is, an independent contractor and is not an agent or employee of CITY. COUNTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, assignment, compensation and discharge of all persons employed by COUNTY and assisting in the performance of services hereunder. COUNTY shall be solely responsible for all matters relating to the payment of its employees including, but not limited to, compliance with social security, workers' compensation, withholding, and all regulations governing such matters.

1 (G) COUNTY shall provide as necessary, fire inspection services as are provided
2 by COUNTY Fire Department to residents of the unincorporated area of COUNTY of
3 Kern.

4
5 (H) County Fire Department Personnel shall make a good faith effort to attend a
6 Wasco City Council meeting once every month of the calendar year.

7
8 2. PLANS REVIEW, INSPECTIONS AND CODE ENFORCEMENT FUNCTIONS:
9

10 Solely for the purpose of enforcing or assisting in the enforcement of the regulations of
11 the State Fire Marshal, as provided for in Chapter 1 of Title 19 of the California Code
12 of Regulations, COUNTY will perform the following specific functions on behalf of
13 CITY:

14
15 (A) Plan check and approve or disapprove all building, electrical, and plumbing
16 plans for all occupancies covered by Chapter 1 of Title 19 of the California Code of
17 Regulations before a building permit is issued by CITY and construction started;

18
19 (B) Plan check and approve or disapprove any changes in approved plans on all
20 the above described occupancies for new construction, alterations to existing
21 buildings, and any changes of occupancy;

22
23 (C) Make joint final inspection with building inspection personnel of CITY on all of
24 the above described occupancies. No certification of lights, gas, or occupancy shall
25 be issued nor business license granted until joint approval by COUNTY and CITY after
26 joint final inspection.

27
28 COUNTY will perform these functions without an increase in the Annual Fee (as
29 describe in Paragraph 7), provided that fees for these services in the amounts
30 established by COUNTY are paid to COUNTY pursuant to Paragraph 10 and provided
31 further that the services do not require that COUNTY increase staffing level set forth in
32 Paragraph 5(C).

33
34 3. FIRE HYDRANTS AND WATER SUPPLY:
35

36 (A) CITY, as its sole and separate obligation, shall continue to provide a system of
37 fire hydrants and water supply for fire prevention and suppression within CITY. CITY
38 shall cooperate with and assist COUNTY in requiring that CITY Water Department or
39 other local water purveyors provide at least minimum water fire flows as required by
40 the California Fire Code and hydrants for fire protection purposes within CITY.

41
42 (B) COUNTY shall annually inspect all fire hydrants within CITY to ensure that fire
43 hydrants are mechanically operable and capable of delivering water. COUNTY shall
44 notify CITY Water Department or other local water purveyors, in writing, of any
45 maintenance requirements as soon as possible after such inspections and at any other
46 time COUNTY becomes aware of maintenance or repair requirements. COUNTY shall
47 not be liable to pay CITY Water Department or any other water purveyors for hydrant

1 installation, painting to COUNTY specifications, repair, maintenance, or rental fees or
2 any other related costs or expenses.

3
4 4. ROUTING OF EMERGENCY CALLS:

5
6 (A) The immediate transference of 9-1-1 calls to COUNTY by CITY's Public Safety
7 Answering Point (PSAP) shall be performed on all fire, rescue, hazardous materials,
8 and emergency medical incidents without cost to COUNTY. CITY shall be responsible
9 for all costs associated with connecting ring down circuits from its PSAP to COUNTY's
10 circuit.

11
12 (B) COUNTY shall provide to CITY quarterly statistical response information reports
13 for emergency incident activity and response times. Additional available data may be
14 provided by request of CITY.

15
16 5. SERVICE LEVEL:

17
18 (A) Nothing in this Agreement precludes the future expansion, closure,
19 consolidation, or relocation of the fire stations referenced herein if such action is
20 mutually beneficial to and agreed upon by both CITY and COUNTY

21
22 (B) Any agreed-upon adjustments in staffing may cause adjustments in the
23 determination of the Annual Fee.

24
25 (C) COUNTY will provide to CITY a minimum assigned service level based on daily
26 staffing (24-7) of one (1) Captain, one (1) Engineer and one (1) Firefighter (one of
27 each per shift) at Station Number 31 located at 2424 7th Street, Wasco, California, or
28 another designated location deemed acceptable by both CITY and COUNTY. Fire
29 personnel assigned will be comparably equipped and trained as other similar positions
30 within COUNTY Fire Department. COUNTY will also provide such "backup" or
31 additional service as reasonably necessary in accordance with professional firefighting
32 standards, including, but not limited to those situations where firefighters assigned to
33 the CITY are utilized outside CITY limits on emergencies.

34
35 (D) Any request by CITY for increased Service Levels shall be communicated to
36 COUNTY no later than January 1st prior to implementation the following fiscal year,
37 subject to approval by COUNTY and in accordance with Section 12 "POTENTIAL
38 CHANGES IN SERVICE LEVEL" herein.

39
40 6. COST ALLOCATION METHODOLOGY:

41
42 The Annual Fee in this Agreement is based upon CITY incorporated area boundaries
43 as of the effective date of this Agreement and minimum service level set forth in
44 Paragraph 5. A change in the incorporated area boundaries of the City shall be
45 considered a potential change in service subject to Section 12 "POTENTIAL
46 CHANGES IN SERVICE LEVEL" herein. The methodology for cost allocation is based
47 on:
48

(A) Direct Cost Per Capita Countywide - Direct costs are determined by using actual expenditures for the last completed fiscal year expenditures for the fire department programs of Operations, Fire Prevention, Arson Investigation, Hazardous Materials, Technical Rescue, and Reserves. The annual amortized apparatus/equipment replacement cost is added to direct costs to determine Total Direct costs. Total Direct Costs are then divided by the Countywide protected population to determine the Direct Cost Per Capita Countywide. The Countywide Protected population is determined by the County Fire department's GIS Specialist through a methodology adopted by the Kern Council of Governments (Kern COG).

(B) Cities' Stations On-Duty Staffing Ratio - The total on-duty staffing of all City stations is divided by the Fire Department's total on-duty staffing Countywide. This factor is applied against the Direct Cost Per Capita Countywide and is used to discount the net costs allocated to the City. The on-duty staffing ratio accounts for the availability of resources to provide fire protection services directly to the Cities.

(C) Cities Direct Cost Per Capita - The Direct Cost Per Capita Countywide is multiplied by the Cities Stations On-duty Staffing to arrive at the Cities Direct Cost Per Capita. The Cities Direct Cost Per Capita is multiplied by the protected population of the City to determine the Cities Allocated Direct Cost.

(D) Cities' Allocated In-direct Cost - An In-direct cost will be applied to the City's Allocated Direct Cost. The Indirect cost factor is based on the Fire Department's last completed fiscal year In-direct billing rate, which is calculated in accordance with OMB Circular A-87 and certified by the Kern County Auditor-Controller-County Clerk;

(E) The Cities' Allocated Direct and In-direct Costs are then added together to identify the Cities' Allocated Total Cost.

(F) All Fire Fund property tax revenues collected within the CITY and retained by the COUNTY Fire Department shall then be credited against the Cities' Allocated Total Cost to determine the resulting Net Allocated Total Cost. Fees collected pursuant to Paragraph 10 herein shall not be credited against the Cities Allocated Total Cost.

7. COMPENSATION:

CITY will compensate COUNTY for the performance of duties under this Agreement as follows:

(A) The Net Allocated Total Cost for FY2017-18 (without additional on-duty positions), beginning on July 1, 2017 and ending June 30, 2018, is \$497,151

(B) A fixed increase of 2.1% per year will be added to the prior year Net Allocated Total Cost to calculate CITY's Annual Fee, as follows:

The Net Allocated Total Cost ("Annual Fee") for FY 2018-19 is \$507,591.

The Net Allocated Total Cost ("Annual Fee") for FY 2019-20 is \$518,250.

The Net Allocated Total Cost ("Annual Fee") for FY 2020-21 is \$529,134.

1 The Net Allocated Total Cost ("Annual Fee") for FY 2021-22 is \$540,245.

2
3 Any increases in costs necessitated or mandated by legislative or judicial decisions or
4 actions, or by CITY request for increases in service level, other than penalties or
5 damages due to negligence of COUNTY, shall be due in any fiscal year in which they
6 occur.
7

8 (C) Average Actual Salaries and Benefit Costs will be used as the basis for costs to
9 be billed to the CITY for any additional personnel requested by the CITY.
10

11 (D) COUNTY shall be responsible for all costs and expenses incident to the
12 performance of the services for CITY, including but not limited to, all costs of
13 equipment provided by COUNTY, all fees, fines, licenses, bonds or taxes required of
14 or imposed against COUNTY and all other of COUNTY'S costs of doing business.
15 Except as expressly provided for herein, CITY shall not be responsible for any
16 expense incurred by COUNTY in performing services for CITY.
17

18 8. FIRE FUND RETENTION:
19

20 In the event CITY annexes additional areas from COUNTY, COUNTY shall continue to
21 receive the Fire Fund revenues associated with those additional areas. Those
22 additional Fire Fund revenues shall not be deducted from the ALLOCATED TOTAL
23 COSTS until COUNTY'S costs are reviewed and adjusted as necessary to serve the
24 new incorporated boundaries.
25

26 Fire Fund revenues will be evaluated at least annually to assess the apportionment of
27 costs, resources and/or opportunities for capital and other improvements.
28

29 9. BILLING & PAYMENT:
30

31 (A) In consideration of the covenants contained herein, CITY shall pay to COUNTY
32 the costs specified in Section 6 "COST ALLOCATION METHODOLOGY" and Section
33 7 "COMPENSATION" herein over the term of the Agreement. The Kern County Fire
34 Department shall, within thirty (30) days of the close of each calendar year quarter,
35 invoice CITY on a quarterly basis for one fourth of the amount to be paid annually.
36 CITY shall pay COUNTY within forty-five (45) days of receipt of the invoice. Invoices
37 and general notices shall be sent to CITY at:
38

39 City of Wasco
40 746 8th Avenue
41 Wasco, CA
42

43 Payments shall be sent to:
44

45 Kern County Fire Department
46 5642 Victor Street
47 Bakersfield, CA 93308
48

1 Either party shall notify the other in writing of an address change.

2
3 (B) Interest shall be added to any payment invoiced by COUNTY and that is
4 received by COUNTY after the due date (late payment). The interest rate on any late
5 payment shall be established as the pooled treasury rate as earned by COUNTY, as of
6 the first day payment is late. The period for computing this interest shall commence
7 the day following the payment due date and end the date of receipt of payment by
8 COUNTY. The interest payment shall be computed as follows:
9

10
$$\frac{\text{(No. of Days Late)}}{365} \times \text{Prime Lending Rate} \times \$ \text{Amount of Payment} = \text{Late Payment}$$

11 Interest Charge
12

13 (C) In the event that a billing/payment dispute arises between COUNTY and CITY,
14 the parties will negotiate in good faith to resolve the dispute and the following
15 procedures will be taken to resolve the dispute:
16

17 1. The dispute will be specified, in writing, and presented to COUNTY
18 jurisdictional Deputy Fire Chief if a CITY dispute, or to CITY MANAGER if a
19 COUNTY dispute, within thirty (30) days of the receipt of a disputed invoice or
20 disputed payment. CITY shall pay any disputed invoice "under protest."
21

22 2. If COUNTY and CITY cannot fully resolve the dispute within ninety (90)
23 days of receipt of written notification of this dispute (impasse), the impasse will
24 be sent to an independent arbitrator for resolution. Said arbitrator shall be
25 selected jointly by CITY and COUNTY within forty-five (45) days of impasse and
26 shall be paid for equally by CITY and COUNTY. If COUNTY and CITY cannot
27 agree on an arbitrator, each party shall, at its own expense, retain an arbitrator
28 within thirty (30) days after the jointly selected arbitrator should have been
29 selected. These two arbitrators will within thirty (30) days mutually select a third
30 arbitrator. The mutually agreed-upon arbitrator will resolve the matter within
31 thirty (30) days after his/her selection. COUNTY and CITY shall share equally
32 the cost of the third arbitrator. The arbitrator's resolution of the impasse shall
33 be final and binding.
34

35 If COUNTY prevails in arbitration, all money owed and not paid to COUNTY will be
36 forwarded to the mailing address identified in Section 9 "BILLING & PAYMENT",
37 herein, within thirty (30) calendar days from the date of the issuance of the arbitrator's
38 decision. In addition, CITY will be assessed and pay the interest payment amount as
39 calculated for an interest payment in Section 9(B) of this Agreement.
40

41 If CITY prevails in arbitration and has paid COUNTY the disputed amount, a refund to
42 CITY will be forwarded to the mailing address identified in Section 9(A), herein, within
43 thirty (30) calendar days from the date of the issuance of the arbitrator's decision. In
44 addition, COUNTY will pay to CITY the interest as calculated for an interest payment,
45 as identified in Section 9(B) of this Agreement.
46

47 10. FEES:
48

1 All revenues generated from fees established or implemented by COUNTY shall be
2 COUNTY revenues. Fees of any nature collected by CITY on behalf of COUNTY shall
3 be passed-through to COUNTY by CITY as COUNTY revenues. CITY shall be
4 authorized to retain a five percent (5%) administrative charge for any fees collected on
5 behalf of COUNTY. Any fees charged and collected by CITY subsequent to the
6 commencement date of service shall remain as revenues of CITY provided that such
7 fees are not identified as fees imposed by COUNTY. COUNTY shall be authorized to
8 retain a five percent (5%) administrative charge for any fees collected by COUNTY on
9 behalf of CITY. Excluding any State, Federal, or judicially mandated Programs or
10 fees, any fees established by COUNTY to be imposed in CITY after the
11 commencement date of service shall require the prior approval of CITY, which shall
12 not be unreasonably withheld. After giving written notice to COUNTY, CITY may at
13 any time choose to pay, in part or whole, any fees levied by COUNTY in lieu of
14 imposition of the fees upon the citizens of CITY.

15
16 11. COST RECOVERY:
17

18 In the event that an incident occurs within CITY while this Agreement is in effect during
19 which COUNTY may be required to deploy a substantial number of COUNTY
20 apparatus and personnel to such incident, COUNTY reserves the right to pursue cost
21 recovery at its sole discretion against the party that caused the incident but not against
22 CITY. In the event CITY were to pursue cost recovery for COUNTY resources
23 deployed to such an incident, CITY shall promptly pay to COUNTY all such COUNTY
24 costs recovered by CITY less the cost of CITY'S recovery efforts. Costs for COUNTY
25 resources paid for by CITY through this Agreement as detailed in Section 5(C)
26 "SERVICE LEVEL" herein and deployed to such an incident shall not be recoverable
27 by COUNTY from CITY.
28

29 12. POTENTIAL CHANGES IN SERVICE LEVEL:
30

31 If public safety requires an increase in staffing levels during the term of this
32 Agreement, CITY and COUNTY will renegotiate the annual compensation paid to
33 COUNTY.
34

35 13. FIRE STATION EXPANSION/CONSTRUCTION:
36

37 During the term of this agreement, CITY and COUNTY agree to commence
38 discussions regarding the need for any future expanded fire service throughout CITY
39 based on CITY's future plans. CITY and COUNTY agree to explore reasonable
40 solutions for same, such that the parties formulate a master plan to address future fire
41 protection resource requirements, including any future fire station construction projects
42 or capital equipment acquisitions, and the allocation of costs between CITY and
43 COUNTY.
44

45 14. TERM OF AGREEMENT:
46

47 The term of this agreement will begin on July 1, 2017 and shall continue in full force
48 and effect until June 30, 2022 unless otherwise terminated.

1
2 15. MODIFICATIONS TO AGREEMENT:
3

4 (A) A review of the Agreement terms may be initiated at any time by either party,
5 upon written notice to the other, and modifications made to this Agreement upon
6 written consent of both parties, which consent shall not be unreasonably withheld or
7 delayed. The parties agree to negotiate in good faith and deal fairly with respect to
8 performance under this Agreement and to any proposed modifications to this
9 Agreement.

10
11 (B) This Agreement may be modified only in writing and with the approval of both
12 CITY and COUNTY.
13

14 16. TERMINATION
15

16 (A) Either party may terminate this Agreement without cause by providing to the
17 other party in writing at least (12) months advance notice of its intent to terminate; and
18 any such notice of termination by COUNTY shall be served upon CITY by delivery of
19 said notice either in person or by registered mail to the CITY Clerk; any such notice of
20 termination shall be served upon COUNTY by delivery of said notice either in person
21 or by registered mail to the Clerk of the Board of Supervisors.
22

23 (B) In the event this Agreement is terminated, all real property, equipment, fire
24 apparatus, personal property, and supplies, contained in COUNTY fire station(s) shall
25 remain the sole property of COUNTY.
26

27 (C) In the event CITY detaches from COUNTY, any outstanding Annual Fee
28 payments due by CITY as of the effective date of the detachment shall be due and
29 payable to COUNTY no later than the effective date of detachment. Should a credit be
30 due CITY from COUNTY, a refund shall be paid to CITY no later than the effective
31 date of detachment.
32

33 17. INDEMNIFICATION:
34

35 (A) Neither party will be liable to the other party for any damage, liability claim or
36 cause of action for damage to, or destruction of, property or for injury to or death of
37 persons arising solely from any act or omission of the other party's officers, agents and
38 employees.
39

40 (B) CITY will indemnify, hold harmless, and defend (upon the written request of
41 COUNTY) COUNTY, its officers, employees, and agents from any and all loss,
42 damage, liability claim or cause of action of every nature whatsoever for the physical
43 damage to or destruction of property, including the property of COUNTY or physical
44 injury to or death of any person, including COUNTY'S officers, employees or agents,
45 which may arise out of any act or omission of CITY, its officers, employees or agents.
46

47 (C) COUNTY will indemnify, hold harmless and defend (upon the written request of
48 CITY) CITY, its officers, employees, and agents from any and all loss, damage,

1 liability, claim or cause of action of every nature whatsoever for physical injury to or
2 death of any person, including CITY'S officers, employees and agents, which may
3 arise out of any act or omission of COUNTY, its officers, employees or agents.
4

5 (D) The party against whom any claim arising from this Agreement is filed will give
6 prompt notice of the filing of the claim to the other party.
7

8 18. INSURANCE
9

10 Both parties represent that they are self-insured for all exposure including bodily injury
11 and property damage. Both parties agree to provide proof of self-insurance upon
12 demand to include coverage above any self-insured retention.
13

14 19. WAIVER:
15

16 No waiver of a breach of any provision of this Agreement will constitute a waiver of any
17 other breach, or of such provision. Failure of CITY or COUNTY to enforce at any time,
18 or from time-to-time, any provision of this Agreement will not be construed as a waiver
19 thereof. The remedies herein reserved will be cumulative and additional to any other
20 remedies in law or equity.
21

22 20. PARTIAL INVALIDITY:
23

24 Should any part, term, portion, or provision of this Agreement be finally decided to be
25 in conflict with any law of the United States of the State of California, or otherwise be
26 unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or
27 provisions will be deemed severable and will not be affected thereby, provided such
28 remaining portions or provisions can be construed in substance to constitute the
29 agreement which the parties intended to enter into in the first instance.
30

31 21. ENTIRE AGREEMENT:
32

33 This Agreement contains the entire agreement of the parties relating to the rights
34 herein granted and the obligations herein assumed. Any oral representation or
35 modification concerning this Agreement will be of no force or effect excepting a
36 subsequent modification in writing, signed by both parties.
37

38 22. COUNTY RECORDS:
39

40 At any time during normal business hours, upon the request of CITY, COUNTY will
41 make available for examination all of its existing records with respect to matters
42 covered by this Agreement for purposes of audit, examination, or to make copies of
43 such records, exclusive of confidential personnel files.
44

45 23. NOTICES:
46

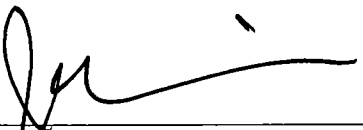
1 All notices required or permitted to be given pursuant to this Agreement may be
2 personally served on the other party by the party giving such notice or may be served
3 by certified mail, return receipt requested, to the following addresses:
4

5 COUNTY: County Fire Chief
6 5642 Victor Street
7 Bakersfield, CA 93308
8

CITY: City Manager, City of Wasco
746 8th Avenue
Wasco, CA 93280

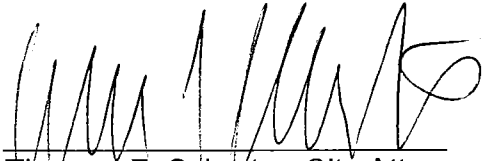
1 IN WITNESS WHEREOF, CITY and COUNTY have caused this Agreement to be executed
2 by their authorized agents.
3
4

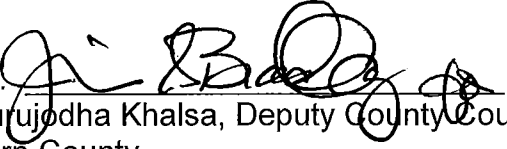
5 APPROVED AS TO CONTENT:
6
7

8
9 By: 
10 J. Paul Paris, City Manager
11 City of Wasco
12


By: 
13 Brian Marshall, Fire Chief
14 Kern County
15

16 APPROVED AS TO FORM:
17
18


19 By: 
20 Thomas F. Schroter, City Attorney
21 City of Wasco
22

By: 
23 Gurujodha Khalsa, Deputy County Counsel
24 Kern County
25


26 "CITY"

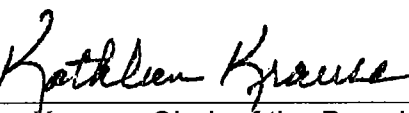
27 By: 
28 Teofilo Cortez, Jr., Mayor
29 City of Wasco
30

31 "COUNTY"

By:  AUG 15 2017
32 Zack Scrivner, Chairman
33 Kern County Board of Supervisors
34

35 Attest:
36
37

38 By: 
39 Duviet Rodriguez, City Clerk
40 City of Wasco

By: 
Kathleen Krause, Clerk of the Board
County of Kern

RESOLUTION NO. 2017 – 3205

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO
APPROVING THE AGREEMENT BETWEEN THE COUNTY OF KERN AND THE CITY
OF WASCO FOR COUNTY PROVISION OF FIRE PROTECTION DUTIES AND
ENFORCEMENT OF STATE FIRE MARSHAL REGULATIONS**

-o0o-

WHEREAS, the City Council of the City of Wasco and the Kern County Board of Supervisors have concurred that the County of Kern will provide Fire Protection Services, and enforcement of State Fire Marshal regulations; and

WHEREAS, Government Code Section 51303 provides in part that the County officers and employees named in the contract shall exercise within the city all of powers and duties conferred upon the City Officers or Employees named in the contract; and

WHEREAS, the City Council of the City of Wasco desires that the functions of the Chief of the Fire Department of the City of Wasco, including enforcement of the regulations of the State Fire Marshal, shall be performed by the Chief of the Fire Department of the County of Kern acting as the Fire Chief of the City of Wasco; and

WHEREAS, the City Council and the Kern County Board of Supervisors wish to adopt the proposed fire protection agreement approved by the parties; and

WHEREAS, by the execution of the aforementioned agreement, it is agreed upon by the City of Wasco and County of Kern that the Wasco community and areas outside the City limits will be more efficiently protected under the direction of the County of Kern; and

WHEREAS, the City and County have negotiated the agreement attached as Exhibit "A" to replace all prior agreements;

NOW, THEREFORE, BE IT RESOLVED that the City of Wasco and the County of Kern enter into a contractual agreement, whereby the County of Kern will provide all fire protection and related duties.

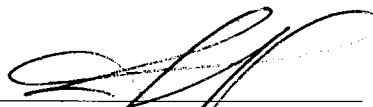
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Wasco on June 20, 2017 by the following vote:

AYES: Cortez, Espitia, Garcia, Reyna, Wegman

NOES: None

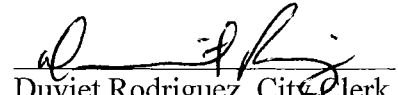
ABSTAIN: None

ABSENT: None



Teofilo Cortez, Jr., Mayor
City of Wasco

I, DUVIET RODRIGUEZ, City Clerk of the City of Wasco, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Resolution No. 2017-3205 adopted by said City Council on this 20th day of June, 2017.


Duviet Rodriguez, City Clerk
City of Wasco

Brian S. Marshall
Fire Chief & Director of Emergency Services

Fire Department Headquarters
5642 Victor Street • Bakersfield, CA 93308 • www.kerncountyfire.org
Telephone 661-391-7000 • FAX 661-399-2915 • TTY Relay 800-735-2929



August 18, 2017

J. Paul Paris
City Manager
City of Wasco
746 8th Street
Wasco, CA 93280

Re: Fire Protection Agreement

Enclosed please find your fully executed copies of the Agreement for County of Kern Fire Protection Duties and Enforcement of State Fire Marshal Regulations between the City of Wasco and the County of Kern. The agreement was approved by the County of Kern Board of Supervisors on August 15, 2017 and given the reference number of 501-2017.

Any future correspondence regarding this agreement should be addressed to Deputy Chief Mike Miller at the address listed above.

Thank you for your assistance in the completion of this agreement,

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael S. Miller", is written over a light blue horizontal line.

Michael S. Miller
Deputy Fire Chief



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager
Keri Cobb, Community Development Director

DATE: September 21, 2021

SUBJECT: Update on City of Wasco Downtown Streetscape Re-Design Efforts

Recommendation:

This item is information only. No action is required.

Background:

On October 6, 2020, the City Staff presented the City Council with an update regarding the Downtown 7th Street conditions and improvements. This presentation included an explanation of why street trees were removed, the significant pedestrian hazards that needed to be corrected and the plan for moving forward with a new streetscape. At that time, the Council had approved \$120,000 in the FY 20-21 budget for Downtown Landscape and Streetscape design to include both a new concept plan and construction drawings. Subsequent to the October 6, 2020 meeting, Staff entered in to a contract with SMS Landscape Architecture to prepare a concept design for the downtown plan.

Discussion:

The necessary tasks identified in order to create a final concept plan and their status, as well as next steps and their anticipated timeline are as follows:

- Kick off meeting and downtown walk with staff to discuss existing conditions, plan boundaries, maintenance requirements and staff preferences. - [Complete](#)
- Online Community Survey – [Complete...results were posted on our website and can be viewed here... <https://www.surveymonkey.com/results/SM-W9VMBXGL9/>](#)
- Draft black and white concept plan. – [Complete](#)
- Meeting with Staff to discuss draft black and white concept plan and get feedback – [Complete](#)
- Make necessary changes and prepare final draft color concept plan for public workshop - [Complete](#)
- Conduct public workshop to get feedback on draft concept plan options – [Tentatively Fall 2021](#)
- Make necessary changes to draft concept plan based on public input on concept plan options and finalize plan – [Tentatively Late fall 2021](#)

- Bring plan to City Council for final approval – Tentatively January 2022
- Procure civil engineering firm to draft construction plans and bid package - Tentatively February 2022
- Bid construction – June 2022
- Begin construction – September 2022

We are approximately 6 months behind our initial tentative schedule due to COVID 19 related setbacks and unexpected health issues for both City Staff and our consultant.

Fiscal Impact:

There is \$125,000 programed in the FY 2021-2022 CIP budget for design and \$80,000 budgeted to begin construction.

Attachments:

None



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager

DATE: September 21, 2021

SUBJECT: Discussion and direction to staff regarding the City of Wasco's position on proposed reform of the Bradley Burns local sales tax distribution model.

Recommendation:

Staff recommends the City Council authorize the City Manager and/or his designee to take an active role in this matter, including participation in state, regional, and local working groups.

Discussion:

As presented previously, the League of Cities will, later this week, consider a resolution to promote legislation that would shift the distribution of 1% local "Bradley Burns" sales tax from the current allocation to a destination-based model for certain sales. While this change might actually benefit Wasco in the short term, there is significant division between cities and many believe insufficient data exists to guide legislators in crafting a fair, responsible and sustainable new model.

SB 792 (Glazer) is a direct result of the previous working group's conclusion that equitable legislation was impossible to craft without current, accurate sales data to model the effects of reform. SB 792 requires large on-line retailers to collect and submit with their sales tax returns data about the destination of the sale. This Bill has passed the Legislature and will be considered by the Governor. Many believe the Bill does not go far enough.

Some so-called "bedroom" communities without large retail or on-line sales centers receive a disproportionately small share of sales tax allocation under current rules. Previous failed Bills and likely future reform Bills will help correct this. However, the correction currently proposed will almost certainly cause significant financial disruption for cities that have relied upon the current model in making General Plan, zoning and other land use decisions – in many cases over a period of decades.

In contrast to an outright shift from Point-of-Sale to Destination, solutions proposed in the previous working group include two or three-way splits of the collected tax: either Point-of-Sale/Destination or perhaps Point-of-Sale/Destination/Last-mile Warehouse. The three-way model preserves at least some of the current model but also recognizes the impacts of pure logistics movement and final delivery activity. Of course, agreement on the

percentages of such a split will be difficult. Hence, the call for better, current data to help guide the discussion.

Fiscal Impact:

The adopted FY 20-21 Budget contains sufficient City Manager Travel and Training funding to cover the cost of this activity. No budget action is needed.



STAFF REPORT City of Wasco

TO: Honorable Mayor and Council Members

FROM: M. Scott Hurlbert, City Manager

DATE: September 21, 2021

SUBJECT: Report regarding the procurement and deployment of body worn cameras, and Adopt a Resolution Approving Amendment No. 1 to the June 15, 2021 Agreement by and between the City of Wasco and the County of Kern to Provide Fire Protection Services within the City of Wasco.

Recommendation:

Staff recommends the City Council to adopt a Resolution approving Amendment No. 1, providing for the cost of Body Worn Cameras and supplementing the June 15, 2021 agreement by and between the City of Wasco and the County of Kern to Provide Law Enforcement Services Within the City of Wasco; and authorizing the City Manager to execute Amendment No. 1, subject to City Attorney approval of minor changes (if any) introduced by the County.

Background:

While finalizing the terms of the current Kern County Sheriff's Office (KCSO) Law Enforcement Services contract, provision of body worn cameras (BWC) was discussed. The City had previously purchased a BWC system and provided the cameras to Deputies assigned to Wasco. KCSO was in the midst of rolling out a new, standardized BWC system to the entire department and it was agreed that once the incremental cost of the cameras for KCSO staff assigned to the Wasco substation was determined, an amendment to the contract would be executed.

Discussion:

Subsequent to execution of the contract, the City's share of the new BWC was determined to be \$55,518.00. In anticipation of this incremental cost, the budgeted KCSO Contract expense amount was adjusted from \$4.3 million to \$4,355,518.00 and included in the adopted FY 2021-2022 City budget. Attachment 3 is the KCSO cost worksheet showing the cost the BWC and revised contract total.

The KCSO is now ready to move forward with acquisition and deployment of the Axon BWC system and has provided Amendment No. 1 for review by the City. Attachment 2 is a draft of the Amendment with City of Wasco Staff edits, as provided to Kern County. County Council will finalize the document before presenting to the County Board of

Supervisors for approval. Staff anticipates minor edits but no change to the cost or other terms.

Staff requests Council approve the Resolution authorizing the City Manager to execute Amendment No. 1, subject to City Attorney approval of minor changes (if any) introduced by the County. Any significant changes to Amendment No. 1 will be brought back to Council for further review and approval.

Fiscal Impact: The incremental \$55,518.00 cost of body worn cameras was anticipated in the adopted FY 2021-2022 City budget and sufficient funds exist for this cost. No budget action is required.

Attachments:

1. Resolution KCSO Amendment No 1
2. KCSO Amendment No 1 – BWC
3. KCSO Amendment No 1 – Worksheet

RESOLUTION NO. 2021 –

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WASCO APPROVING
AMENDMENT NO. 1 TO THE JUNE 15, 2021 AGREEMENT BY AND BETWEEN THE CITY OF
WASCO AND THE COUNTY OF KERN TO PROVIDE LAW ENFORCEMENT SERVICES
WITHIN THE CITY OF WASCO.**

WHEREAS, The City of Wasco and County of Kern, on June 15, 2021, entered into an Agreement whereby Kern County agreed to provide law enforcement services to the City of Wasco on the terms and conditions therein and which is on file with the Clerk of Kern County's Board of Supervisors, and

WHEREAS, The County of Kern and City of Wasco wish to amend said Agreement to provide for the procurement of, payment for, and deployment of body-worn cameras as part of the services rendered under said Agreement.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Wasco as follows:

SECTION 1: Authorizes the City Manager to negotiate, subject to the City Attorney's review, the final terms and conditions of Amendment No. 1 to the June 15, 2021, Agreement for Law Enforcement Services between the County of Kern and the City of Wasco.

SECTION 2: Authorizes the Mayor, City Manager, and the City Clerk to sign said agreement.

-o0o-

I HEREBY CERTIFY that the foregoing Resolution No. 2021 - was passed and adopted by the Council of the City of Wasco at a regular meeting thereof held on September 21, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NOES:

ABSTAIN:

ABSENT:

GILBERTO REYNA,
MAYOR of the City of Wasco

Attest: _____

MARIA O. MARTINEZ
CITY CLERK and Ex Officio Clerk of
the Council of the City of Wasco

AMENDMENT NO. 1
TO PROVIDE LAW ENFORCEMENT SERVICES WITHIN THE
CITY OF WASCO AGREEMENT
(County of Kern – City of Wasco)

This Agreement (“Amendment No. 1”) is made and entered into on _____, by and between the County of Kern, a political subdivision of the State of California (“**COUNTY**”), and the City of Wasco, a municipal corporation in the County of Kern (“**CITY**”).

RECITALS

- A. The CITY and COUNTY have an Agreement whereby the Kern County Sheriff’s Office (KCSO) provides law enforcement services to the CITY pursuant to Kern County Agreement No. ~~XXX~~401-2021, entered into on July ~~XX~~20, 2021, which is on file with the clerk of the Kern County Board of Supervisors and incorporated herein by this reference, (“Agreement”).
- B. By this Amendment, the CITY and COUNTY intend to outline and document the responsibilities of ownership, usage, upkeep, and financial responsibilities for each Party regarding Axon BWCs and associated equipment.

AGREEMENT:

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

- 1. **Purchase and Ownership**: The CITY will reimburse the COUNTY the total cost for all Axon BWCs and associated equipment purchased by the COUNTY for KCSO Deputies assigned to the Wasco City Substation. Any and all Axon BWCs and associated equipment purchased by the COUNTY will remain the property of the COUNTY.
- 2. **Use**: KCSO Deputies assigned to the Wasco City Substation will utilize the Axon BWCs and associated equipment in furtherance of their law enforcement service to the CITY.
- 3. **Axon Body Worn Cameras and Associated Equipment**: “Axon Body Worn Cameras and Associated Equipment,” for the purposes of this Amendment, is defined as follows: including, but not limited to, body worn cameras (BWCs), chargers, docking stations, hardware, software, storage, data, video, any related

technology, Tasers, Taser accessories and software, and any other tool or item related to law enforcement and/or associated with the law enforcement function as it relates to BWCs.

4. **Warranties and Maintenance**: At the time of purchase, the COUNTY shall acquire the best warranty available on the equipment, as applicable. The KCSO will ensure that all maintenance covered by any warranty is completed within the time frame specified by that warranty. The CITY will be responsible for costs, if any, associated with any warranty maintenance.
5. **Training**: The KCSO shall have and maintain documentation that the assigned Wasco City Substation personnel have been trained on the policy and procedure and any other related training regarding the proper use of the Axon BWCs and associated equipment. The KCSO will not allow any personnel assigned to the Wasco City Substation to use the Axon BWCs or associated equipment who has not been properly trained to operate or use the equipment.
6. **Repairs and Replacement**: Costs associated with repairs and replacement, outside of what is covered by any warranty, will be decided upon and remain at the discretion of the Sheriff or his designee AND the City Manager. The KCSO will be responsible for any cost associated to repair or replace a damaged piece of equipment, which was caused by an employee's malicious, intentional, willful or negligent act. Damage that occurs during the performance of and within the scope of normal duties will not be considered malicious or intentional.
7. **Data Release**: The CITY is not entitled to any video, photograph, recording, image, or data captured by KCSO BWCs except as authorized by existing law or with the written consent of the Kern County Sheriff or his designee.
8. The Calculation of Deputy Costs in **Exhibit "A"** of the Agreement, as amended, is hereby deleted in its entirety and replaced in accordance with the **Exhibit "A" Amendment No. 1**, which is attached hereto and incorporated herein by this reference. The total additional cost of Amendment No. 1 is Fifty-five thousand five-hundred eighteen dollars (\$55,518.00) for eighteen (18) Axon Body-Worn Cameras and associated equipment and services. The revised contract total for Agreement 401-2021 shall be \$4,345,570.
9. Except as expressly amended herein, all other terms, notices, intents, and provisions of the Agreement shall remain in full force and effect.

IN WITNESS HEREOF, the parties hereto have executed this Amendment No. 1 on the day first above written.

ATTEST:

By: _____
Maria O. Martinez, City Clerk

**APPROVED AS TO CONTENT AND
RECOMMENDED:**

By: _____
M. Scott Hurlbert, City Manager

~~APPROVED AS TO FORM:~~

By: _____
~~Thomas F. Schroeter,
City Attorney~~

CITY OF WASCO

By: _____
Gilberto Reyna, Mayor

ATTEST:

By: _____
Deputy Clerk

**APPROVED AS TO CONTENT AND
RECOMMENDED:**

By: _____
Donny Youngblood, Sheriff

APPROVED AS TO FORM:

Office of the County of the County
Counsel Kern County

By: _____
County Counsel

COUNTY OF KERN

By: _____
Chairman, Board of Supervisors

CALCULATION OF DEPUTY COSTS, 2021-22
CITY OF WASCO

PERSONNEL COSTS:

Regular Wages:

<u>Position</u>	<u>Number</u>	<u>Salary & Benefits</u>	<u>Total Cost</u>	<u>% of Cost Applicable</u>	<u>Net Costs</u>	<u>TOTALS</u>
Deputy Sheriff -CA, E step	11	\$182,267	\$2,004,938	100.00%	\$2,004,938	
Deputy Sheriff -C, D step	1	\$164,114	\$164,114	100.00%	\$164,114	
Deputy Sheriff -C, E step	2	\$171,414	\$342,829	100.00%	\$342,829	
Deputy Sheriff, C step	1	\$150,560	\$150,560	100.00%	\$150,560	
Sr Dep Sheriff CA, E step	2	\$207,310	\$414,619	100.00%	\$414,619	
Sheriff Sergeant CA D step	1	\$222,758	\$222,758	100.00%	\$222,758	
Sheriff's Support Tech E step	1	\$80,088	\$80,088	100.00%	\$80,088	
FTE	19.00 *					\$3,379,906

Overtime Costs: (Calculated @ 15%)

			Total O/T Salaries @	7.65% SDI Overtime Benefits	Net Costs
	Number	Annual Sal	15%		
Deputy Sheriff -CA, E step	11	\$81,477	\$134,437	\$10,284	\$144,721
Deputy Sheriff -C, D step	1	\$72,285	\$10,843	\$829	\$11,672
Deputy Sheriff -C, E step	2	\$75,982	\$22,795	\$1,744	\$24,538
Deputy Sheriff, C step	1	\$65,423	\$9,813	\$751	\$10,564
Sr Dep Sheriff CA, E step	2	\$94,157	\$28,247	\$2,161	\$30,408
Sheriff Sergeant CA D step	1	\$101,979	\$15,297	\$1,170	\$16,467
Totals	18		\$221,432	\$16,940	\$238,371

Shift Differentials

<u>Shift Differentials</u>		<u>Base Salary</u>	<u>7.5% SD</u>	<u>Net Costs</u>
Deputy Sheriff -CA, E step	4	\$325,908	\$24,443	\$24,443
Sr Dep Sheriff CA, E step	1	\$94,157	\$7,062	\$7,062
				\$31,505

On Call

<u>On Call</u>		<u>Base Salary</u>	<u>5%</u>	<u>Net Costs</u>
Deputy Sheriff -CA, E step	2	\$162,954	\$8,148	\$8,148
				\$8,148

TRANSPORTATION COSTS:

	<u>Miles per Year</u>	<u>Cost per Miles</u>	<u>% of Cost Applicable</u>	<u>Cost per Year</u>	
Vehicle Gas & Maint	18	15,000	0.56	100.00%	\$151,200
					\$151,200

PERSONAL EQUIPMENT:

	<u>Number</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>% of Cost Applicable</u>	<u>Net Costs</u>	
Annual Uniform Allowance	18	\$1,300	\$23,400	100.00%	\$23,400	\$23,400
Body Worn Camera	18	\$3,084	\$55,518	100.00%	\$55,518	\$55,518

LIABILITY INSURANCE:

<u>Net Cost</u>	<u>County Personnel</u>	<u>Cost per Person</u>	<u>Sworn & Non-sworn Contracted</u>	<u>Net Costs</u>	
\$5,657,489	1,406	4,024	19	\$76,453	
	1,406			\$76,453	\$76,453
Total Operational Cost					\$76,453

DISPATCH COSTS:

<u>Total Cost Dispatch</u>	<u>Total No. Units</u>	<u>Units Assigned</u>	<u>Cost/ Unit</u>	<u>Net Cost Contract</u>	
4,275,916	359	18	11,911	\$214,391	\$214,391

OFFICE SUPPLIES (Includes office machines, phones, etc. - See Schedule C)

<u>Total Office Supplies</u>	<u>Divide by Auth staff</u>	<u>Avg Cost Per Employee</u>	<u>Personnel Assigned</u>	<u>Net Costs</u>	
\$1,637,358	1,406	\$1,165	19	\$22,126	\$22,126

TRAINING COSTS: (See Schedule D)

<u>Total Training Cost</u>	<u>Authorized No. Swrn Officers</u>	<u>Cost Per Swrn Off</u>	<u>Swrn Off Contracted</u>	<u>Net Costs</u>	
\$1,374,213	611	\$2,249	18	\$40,484	\$40,484
* Does not include Commander					

ADMINISTRATIVE COSTS (Not Covered in the Above - See Schedule E)

<u>Cost to Ops of Svs&Spl & Appl S&B</u>	<u>Authorize Positions</u>	<u>Cost Per Employee</u>	<u>No. of Employees Assigned</u>	<u>Net Cost</u>	
\$7,700,954	1,406	\$5,477	19	\$104,066.95	\$104,067

Annual Year Contract Cost FY 21/22	(15 Deps, 2 Sr Deps, 1 Sgt, 1 SST)	<u><u>\$4,345,570</u></u>
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