



CITY COUNCIL REGULAR MEETING AGENDA APRIL 02, 2019

CLOSED SESSION: 6:00P.M. – 7:00 P.M.
OPEN SESSION: 7:00 P.M.

Notice is hereby given that the City Council will hold a Regular Meeting on April 02, 2019, at the City Council Chambers, 1416 C Street, Livingston, California. Persons with disabilities who may need assistance should contact the Deputy City Clerk at least 24 hours prior to this meeting at (209) 394-8041, Ext. 121. Any writings or documents pertaining to an Open Session item provided to a majority of the members of the legislative body less than 72 hours prior to the meeting shall be made available for public inspection at Livingston City Hall, 1416 C Street. The Open Session will begin at 7:00 p.m. the Closed Session will be held in accordance with the state law prior to the Open Session beginning at 6:30 p.m. The Closed Session will be held at the City Council Chambers Located at 1416 C Street. The agenda shall be as follows:

CLOSED SESSION

1. Call to Order
2. Roll Call

CLOSED SESSION

A "Closed" or "Executive" Session of the City Council may be held in accordance with state law which may include, but is not limited to, the following types of items: personnel matters, labor negotiations, security matters, providing instructions to real property negotiators, conference with legal counsel regarding pending litigation. The Closed Session will be held in the City Council Chambers located at 1416 C Street, Livingston, California. Any public comment on Closed Session items will be taken before the Closed Session. Any required announcements or discussion of Closed Session items or actions following the Closed Session will be made in the City Council Chambers, 1416 C Street, Livingston, California.

1. Conference With Real Property Negotiator
(Government Code Section 54956.8)
Real Property:
APN: 024-154-005-000
APN: 024-153-003-000
APN: 024-153-011-000
APN: 024-147-006-000
Negotiating Parties for City: Jose Antonio Ramirez, City Manager
Under Negotiation: Potential Property Sale

2. Conference with Labor Negotiator
(Government Code Section 54957.6)
Labor Negotiator: Jose Antonio Ramirez, City Manager
Employee Organizations: OE3 - Police Supervisory Employees Association.
OE3 - Management/Confidential Bargaining Unit
OE3 - Livingston Police Officer Association
AFSCME – Public Works and Parks Unit
All Represented and Unrepresented City Employees

REGULAR MEETING

CALL TO ORDER

Next Resolution No.: 2019-19
Next Ordinance No.: 638

Pledge of Allegiance.

Roll Call.

Closed Session Announcements.

Changes to the Agenda.

AWARDS, PRESENTATIONS, PROCLAMATIONS

1. PG&E – PowerPoint - Community Wildfire Safety Program City of Livingston.
2. Introduction of New Executive Assistant/Deputy City Clerk Monica Cisneros and Swear-in by Mayor Gurpal Samra.

ANNOUNCEMENTS AND REPORTS

Supervisor Rodrigo Espinoza Announcements and Reports.

City Staff Announcements and Reports.

City Manager Announcements and Reports.

City Council Members' Announcements and Reports.

Mayor's Announcements and Reports.

PUBLIC HEARING

3. Resolution Approving Economic Development Incentive Agreement between City of Livingston and Foster Poultry Farms.

CITIZEN COMMENTS

This section of the agenda allows members of the public to address the City Council on any item NOT otherwise on the agenda. Members of the public, when recognized by the Mayor, should come forward to the lectern, and identify themselves. Comments are normally limited to three (3) minutes. In accordance with State Open Meeting Laws, no action will be taken by the City Council this evening. For items which are on the agenda this evening members of the public will be provided an opportunity to address the City Council as each item is brought up for discussion.

CONSENT AGENDA

Items on the Consent Calendar are considered routine or non-controversial and will be enacted by one vote, unless separate action is requested by the City Manager or City Council Member. There will be no separate discussion of these items unless members of the City Council or City Manager request that specific items be removed.

4. Approval of Meeting Minutes Held on February 19, 2019.
5. Approval of Meeting Minutes Held on March 05, 2019.
6. Approval of Warrant Register Dated March 27, 2019.

DISCUSSION AND POTENTIAL ACTION ITEMS

7. Resolution Approving the Sale of Property Located Near the Southwest Corner of Olive Avenue and North Main Street.
8. Resolution Adopting a Motion Increasing the General Budget to Appropriate \$25,000 of the General Fund Unappropriated Fund Balance for Fiscal Year 2018/2019.
9. Resolution Awarding a Contract to Gouveia Engineering, Inc. and Authorizing the City Manager to Execute the Agreement for On-Call Engineering Services for Federally Funded Transportation Projects for the City of Livingston.
10. Gallo 9 Lot Subdivision Discussion.

ADJOURNMENT

Community Wildfire Safety Program

City of Livingston

April 2, 2019



Together, Building
a Better California



Community Wildfire Safety Program



REAL-TIME MONITORING AND INTELLIGENCE

- Coordinating prevention and response efforts by monitoring wildfire risks in real time from our **Wildfire Safety Operations Center**
- **Expanding our network of PG&E weather stations** to enhance weather forecasting and modeling
- Supporting the **installation of new high-definition cameras** in high fire-threat areas



NEW AND ENHANCED SAFETY MEASURES

- Further enhancing vegetation management efforts to **increase focus on vegetation that poses a higher potential for wildfire risk**
- **Conducting accelerated safety inspections** of electric infrastructure in high fire-threat areas
- **Disabling automatic reclosing of circuit breakers and reclosers** in high fire-risk areas during wildfire season
- **Proactively turning off electric power for safety** as a last resort when extreme fire danger conditions are forecasted



SYSTEM HARDENING AND RESILIENCY

- Installing **stronger and more resilient poles and covered power lines**, along with **targeted undergrounding**
- **Upgrading and replacing electric equipment and infrastructure** to further reduce wildfire risks
- Working with communities to **develop new resilience zones**



Real-Time Monitoring and Intelligence

MONITORING wildfire risks in real time from our

24/7 Wildfire Safety
Operations Center

and coordinating prevention and response efforts

INSTALLING

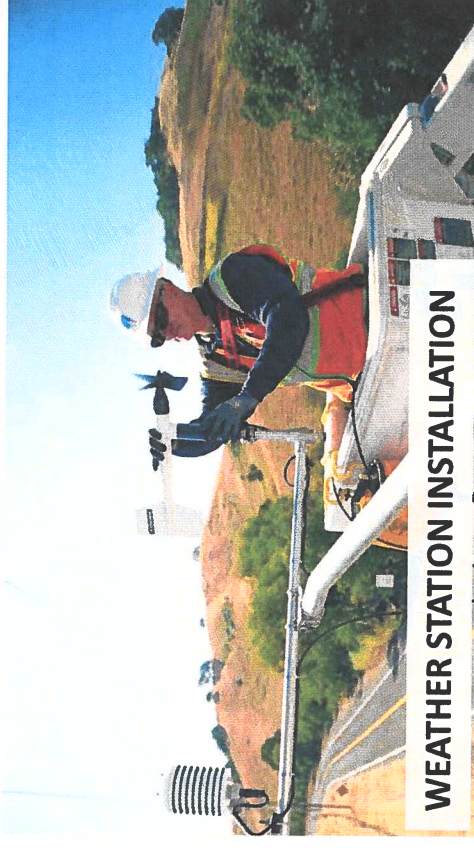
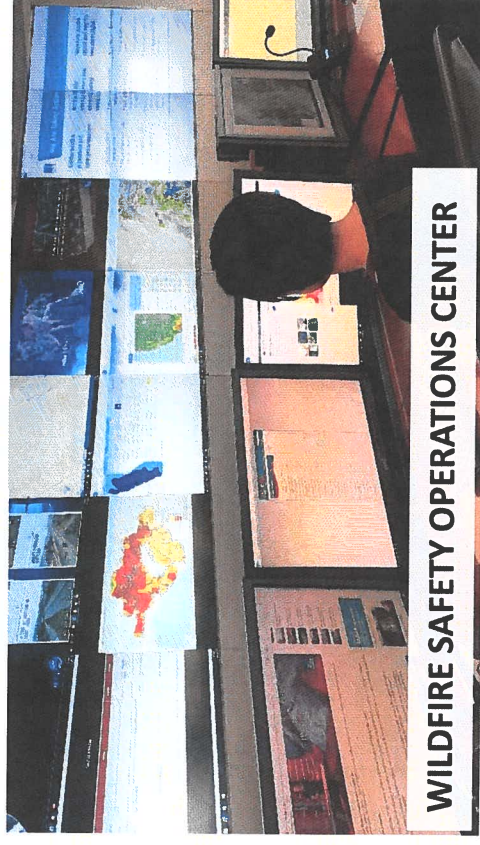
~1,300 new weather
stations by 2022

Data available at mesowest.utah.edu

SUPPORTING the installation of:

~600 high-definition
cameras by 2022

Images available at alertwildfire.org

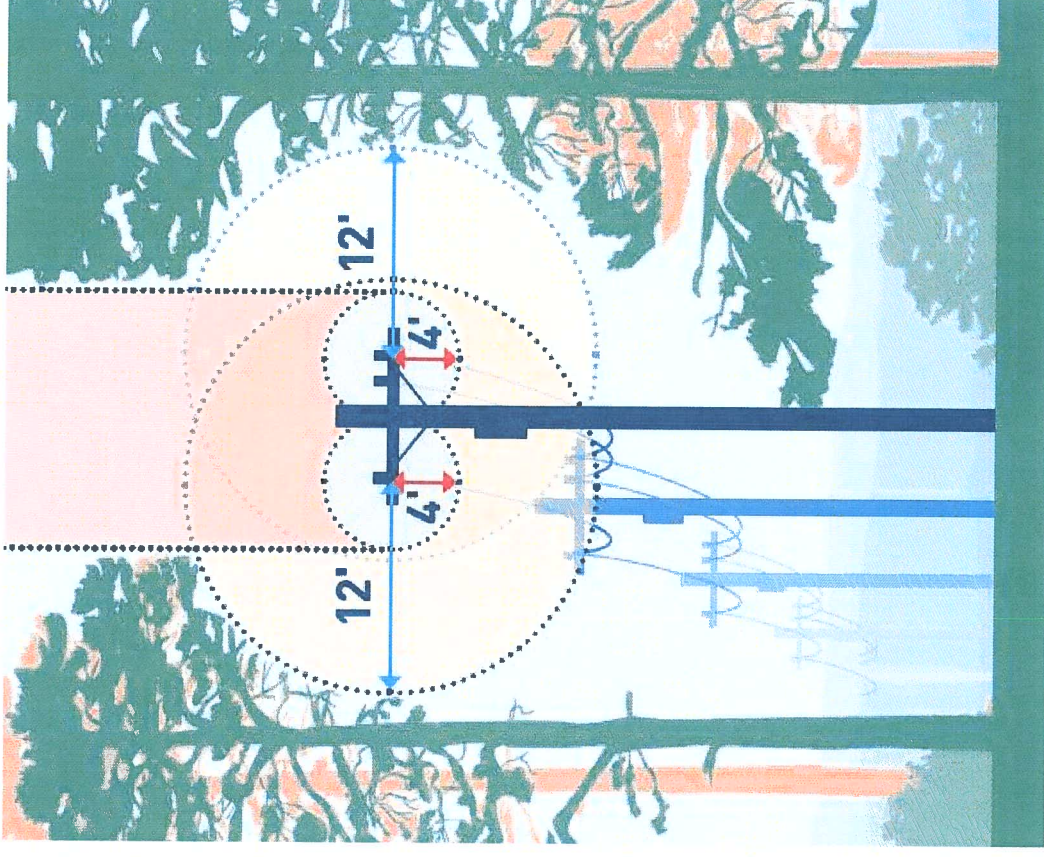




Enhanced Vegetation Management

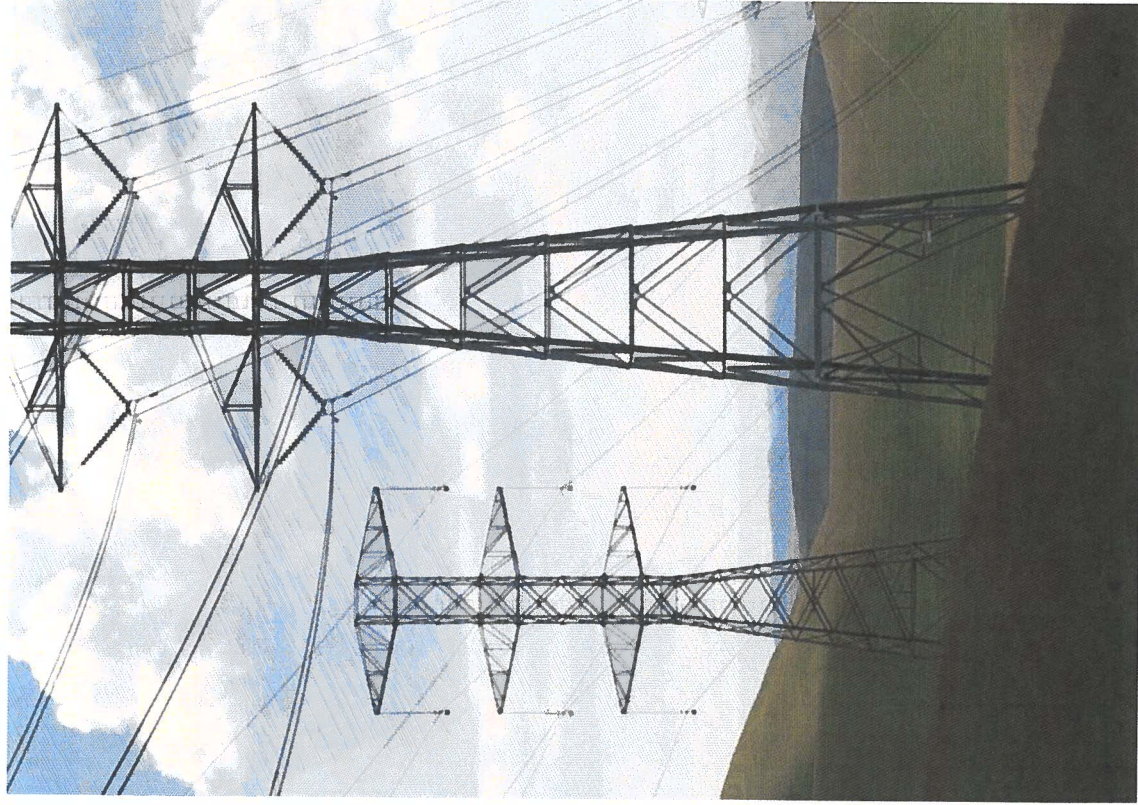
We are increasing our focus on **addressing the vegetation that poses a higher potential for wildfire risk.**

- This enhanced focus includes the following:
 - ✓ **Meeting and exceeding state standards** for minimum clearances around the power line
 - ✓ **Addressing overhanging limbs and branches** directly above and around the lines
 - ✓ **Targeted removal of dead and dying trees** as well as certain species that pose an increased potential risk of falling into power lines
- We are working to complete this important safety work in **high fire-threat areas** over the next several years





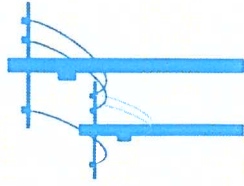
Wildfire Safety Inspections



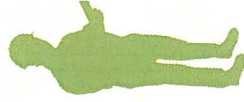
As part of our enhanced wildfire safety efforts, implemented following the 2017 and 2018 wildfires as additional precautionary measures intended to further reduce wildfire risks, **we are conducting accelerated safety inspections of electric infrastructure in areas of higher wildfire risk (Tier 2 and Tier 3).**

- **We are conducting comprehensive inspections of electric towers and poles through visual and aerial inspections.**
- This work is being done as part of our Community Wildfire Safety Program, and is **in addition to our routine inspections and maintenance programs.**
- We are inspecting **substations and transmission and distribution lines** in high fire-threat areas

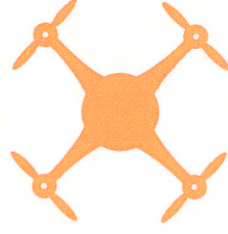
Inspections Overview



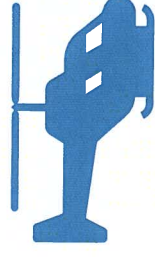
Accelerated inspections of transmission and distribution poles and towers as well as substations in high fire-threat areas



Visual inspections (ground and/or climbing) will be performed by crews of up to four people



Aerial inspections by drones will complement and further enhance inspections



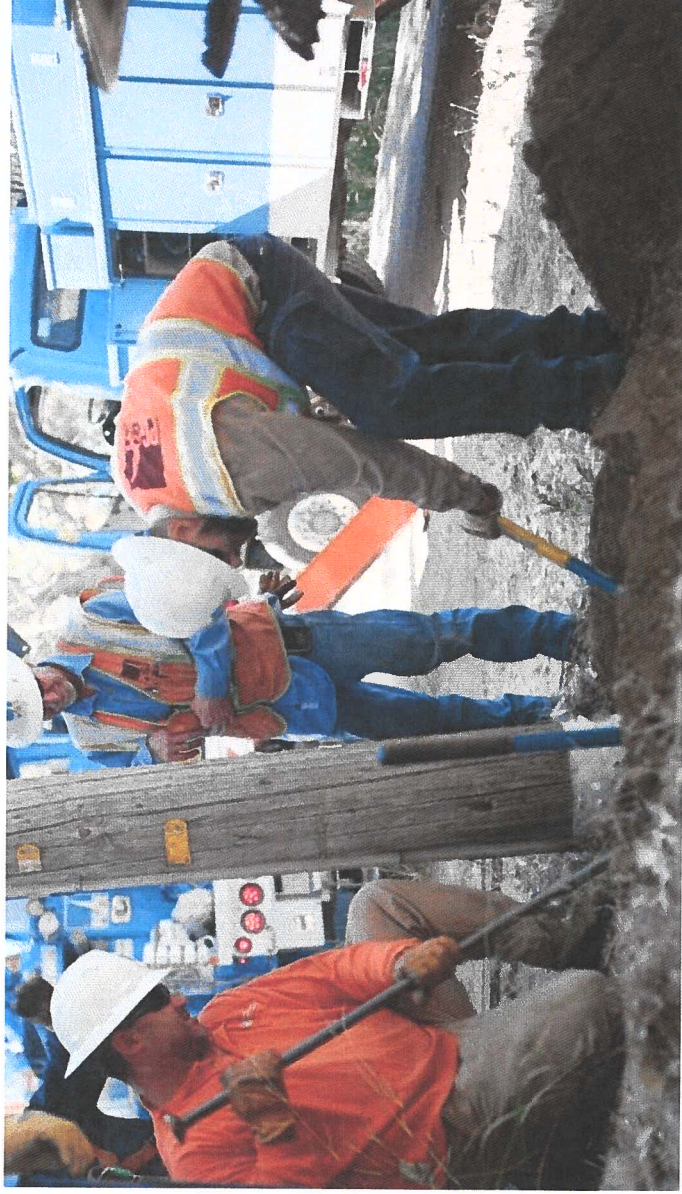
Helicopters may also be used for inspections or to deliver crews to remote locations

We will take action right away to address any immediate risk to public safety found during the accelerated inspections



Electric System Maintenance and Repairs

We will evaluate inspection results to determine repair needs and associated timing. If any issues are found during the accelerated inspections that pose an immediate risk to public safety, we are taking action right away to address the issue.



- When inspections determine that repairs are needed, **but there is not an immediate safety risk, we will follow our preventative maintenance procedures, consistent with state guidelines for high fire-threat areas.**
- **Repairs will depend on what we observe in the field but could range from installing new signs or electrical components to replacing poles or towers.**
- **Where possible, we will bundle work to minimize customer impact, particularly if we need to de-energize the line to safely complete the repairs.**

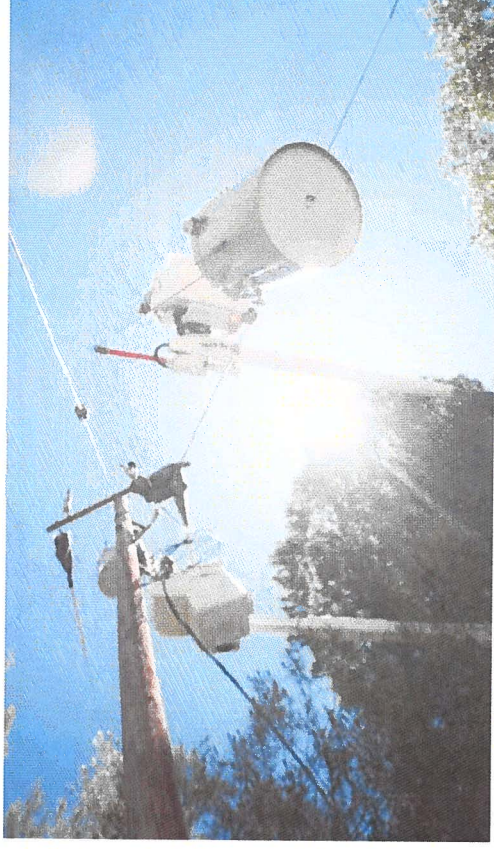
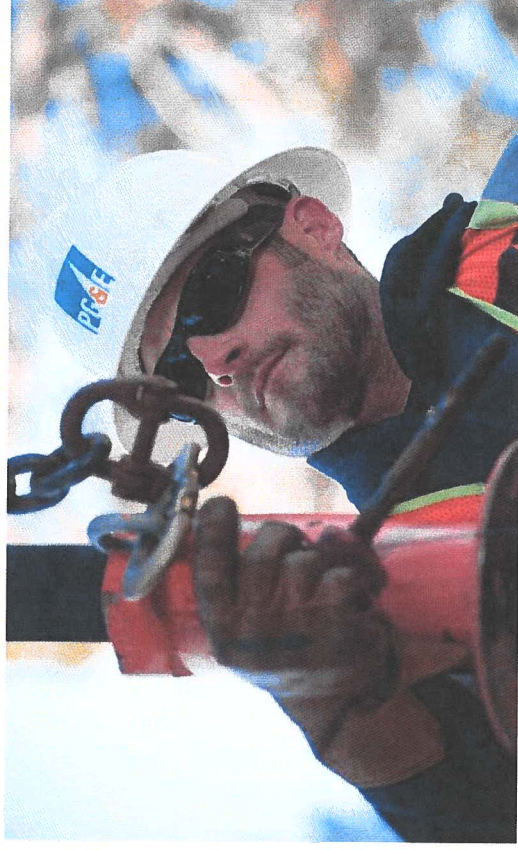


System Hardening and Resiliency

Installing stronger and more resilient poles and covered power lines across approximately 7,100 line miles of highest fire-risk areas

Replacing equipment to further reduce risk to our system and tailoring upgrades based on terrain and weather conditions using more granular analysis of fire-prone regions

Piloting new resilience zones to allow PG&E to provide electricity to central community resources serving local customers during a Public Safety Power Shutoff event





Additional Safety Measures

To further reduce the risk of wildfires, we are **disabling automatic reclosing of circuit breakers and reclosers on lines in high fire-risk areas during wildfire season.**

Where we have remote control capability, we **disable reclosing based on a daily decision-making process during times of elevated risk.**

ENABLED
450 reclosing devices with remote capabilities in 2018

WORKING to enable nearly
300 additional reclosing devices with remote capabilities in advance of the 2019 wildfire season





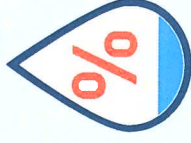
Public Safety Power Shutoff (PSPS)

We monitor conditions across our system and evaluate whether to proactively turn off electric lines, as a last resort, in the interest of safety.

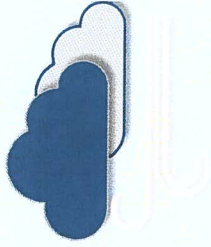
While no single factor will drive a Public Safety Power Shutoff, some factors include:



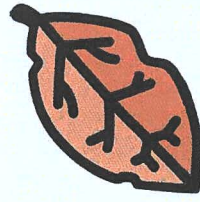
A Red Flag Warning declared
by the National Weather Service



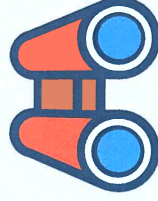
Low humidity levels,
generally 20% and below



Forecasted sustained winds generally above 25 mph and wind gusts in excess of approximately 45 mph, depending on location and site-specific conditions such as temperature, terrain and local climate



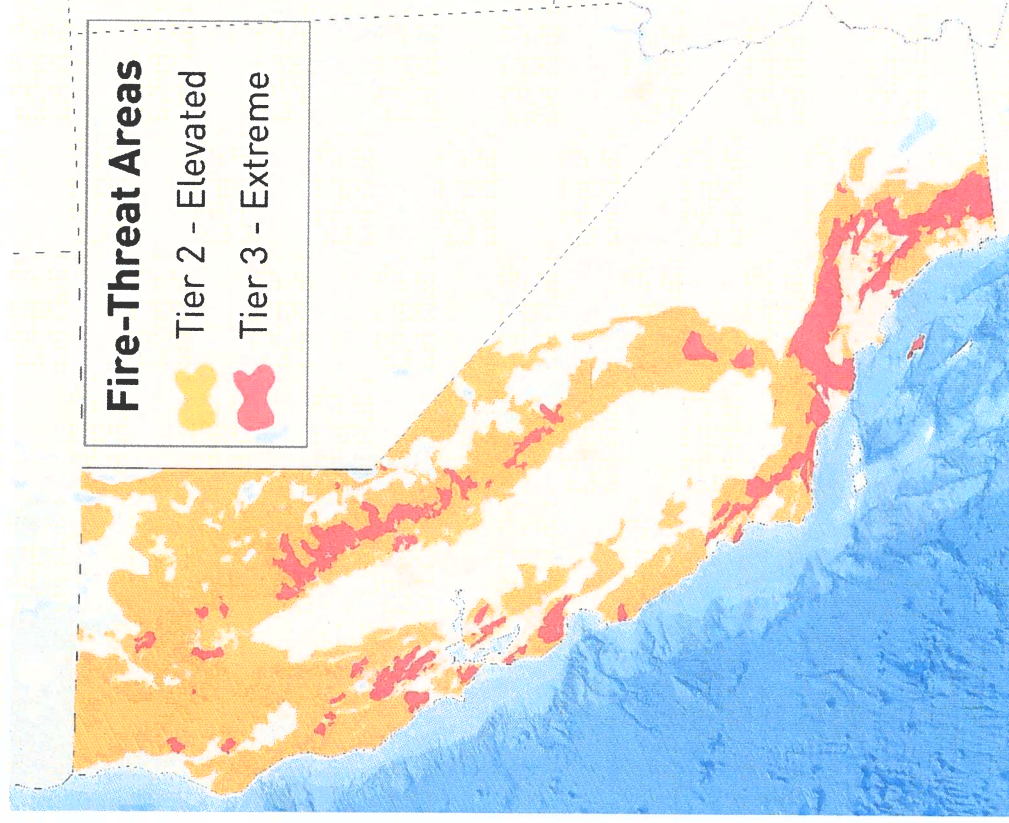
Condition of dry fuel on the ground and live vegetation (moisture content)



On-the-ground, real-time observations from PG&E's Wildfire Safety Operations Center and field observations from PG&E crews



Public Safety Power Shutoff (PSPS)



Source: California Public Utilities Commission

- Beginning with the 2019 wildfire season, we are expanding our Public Safety Power Shutoff program to include **all electric lines that pass through high fire-threat areas – both distribution and transmission.**
- The most likely electric lines to be considered for shutting off for safety will be those that pass through **areas that have been designated by the CPUC as at elevated (Tier 2) or extreme (Tier 3) risk for wildfire.**
- While customers in **high fire-threat areas are more likely to be affected, any of PG&E's more than 5 million electric customers could have their power shut off** due to the interconnected nature of the electric grid.



PSPS Event Notifications

Extreme weather threats can change quickly. **When and where possible, we will provide customers with advance notice prior to turning off power.** We will also provide updates until power is restored.

Timing of Notifications (when possible)

- ~48 HOURS before electricity is turned off
- ~24 HOURS before electricity is turned off
- JUST BEFORE electricity is turned off

DURING THE PUBLIC SAFETY OUTAGE

ONCE POWER HAS BEEN RESTORED



Customer Notifications

We will attempt to reach customers through **calls, texts and emails.** We will also use **social media** and keep **local news** and **radio outlets** informed and updated.

City/County/Agency Notifications

If possible based on conditions, we will **provide notice in advance of notifying** customers through:

- **Phone calls/emails** to primary contacts
- **Automated notifications** to send alerts through multiple channels
- **Provide customer alerts** to share via channels, such as city or county website, Nixle, Nextdoor and Reverse 911



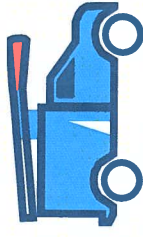
Working to Restore Power

We will only restore power when we are certain it is safe to do so. For planning purposes, we suggest customers prepare for multiple-day outages.



WEATHER ALL CLEAR

After the extreme weather has passed and it's safe to do so, our crews begin patrols and inspections.



PATROL & INSPECT

Crews **visually inspect every mile of the lines to look for potential weather-related damage to the lines, poles and towers.** This is done by vehicle, foot and air.



ISOLATE & REPAIR DAMAGE

Where damage is found, **crews work to isolate the area** so other parts of the system can be restored. Crews **work safely and as quickly as possible** to make repairs.



RESTORE POWER

Once it is safe to energize, **a call is made to the PG&E Control Center** to complete the energization process. **Power is then restored to customers.**



NOTIFY CUSTOMERS

Customers are **notified that power has been restored.**



Working With Our Customers to Prepare

We are continuing to **reach out to our customers and communities** about wildfire safety and steps they can take to prepare.

- ✔ **Reaching out to customers** and asking them to update their contact information at pge.com/mywildfirealerts
- ✔ **Engaging with organizations for our customers who have specific needs** to explore ways we can partner
- ✔ **Partnering with community leaders, first responders, and public safety authorities** around PSPS preparedness and coordination
- ✔ **Holding answer centers and open houses** (as needed) in advance of and during wildfire season

- ✔ **Doing additional outreach to Medical Baseline and Medical Baseline-eligible customers** in high fire-threat areas
- ✔ **Continuing to share information** through pge.com/wildfiresafety





Learn More

We welcome your feedback and input

For questions regarding PG&E's Community Wildfire Safety Program, please contact:

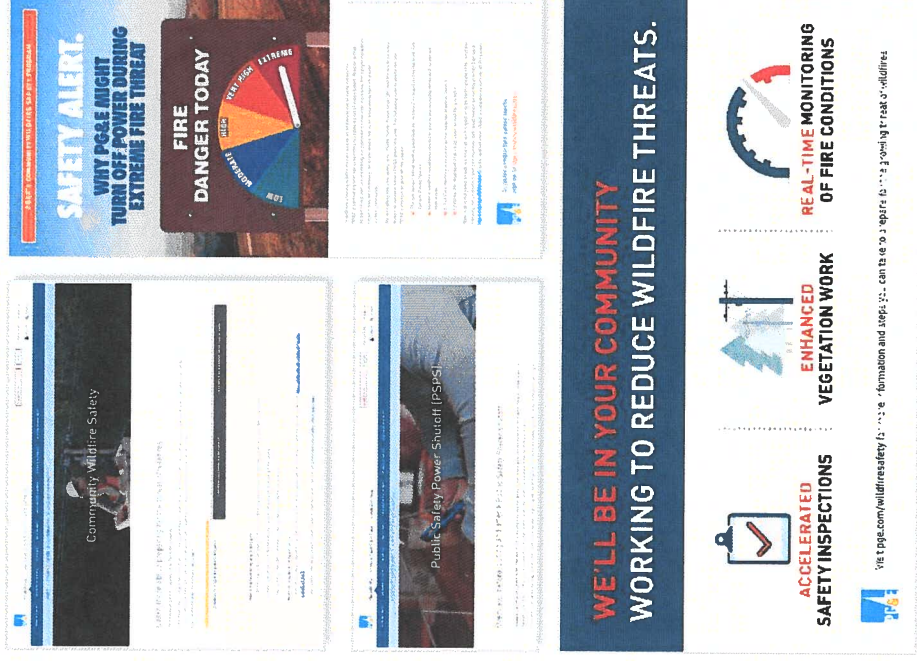
- **Michael Gaffney**
 - 209-312-7698
 - Michael.Gaffney@pge.com

Please direct customers with questions to:

- Call us at **1-866-743-6589**
- Email us at **wildfiresafety@pge.com**
- Visit **pge.com/wildfiresafety**



As a critical partner in emergency response, we want to notify you about a potential Public Safety Power Shutoff in your area, when and where possible. Please provide the best phone numbers and email addresses for your organization.



STAFF REPORT

AGENDA ITEM: RESOLUTION APPROVING ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN CITY OF LIVINGSTON AND FOSTER POULTRY FARMS.

MEETING DATE: April 2, 2019

PREPARED BY: Jose Antonio Ramirez, City Manager

REVIEWED BY: Jose Antonio Ramirez, City Manager

RECOMMENDATION:

City Council adopt a resolution approving an Economic Development Incentive Agreement between the City and Foster Poultry Farms (Foster Farms) whereby the City will pay specified development fees in an amount not to exceed \$553,773.67, in return for Foster Farms remaining, and expanding its facilities, in the City

BACKGROUND:

Successful economic development calls for creating an environment that supports and strengthens existing businesses (Retain & Expand), attracts new businesses (Recruit), and creates employment opportunities in the community while also enhancing city revenues. Actions by the City of Livingston aimed at enhancing the business climate and establishing Livingston as a great place to do business, should include:

- Ensure an effective and consistent development permitting process that also integrates innovation and technology to improve efficiency.
- Encourage activities that attract both residents and visitors from surrounding communities to live, work, shop and visit Livingston.
- Create commercial districts within the community that provide quality shopping, dining, and entertainment possibilities.
- Support community investment (Retain) that create employment opportunities and enhances city revenues.
- Strengthen (Retain) and diversify (Expand) the city's sales tax base while preserving Livingston's unique culture and superior quality of life.

The City has taken a very proactive approach as it relates to economic development and it involves a multi-prong approach. It is one of the reasons why the city developed a special fund called the economic opportunity fund. The City needs to be positioned in such a way as to be able to respond to specific actions and needs that surface in the economic development realm.

The City recognizes that a strong economy, powered by an engaged civic-minded public & private sector, will generate the resources and participative climate necessary to stimulate our community.

PROJECT OVERVIEW

Livingston's future and identity is intertwined with that of Foster Farms and our unique relationship makes for a strong bond around community/family values and economic vitality.

Foster Farms is located in the City and employs approximately 2,000 people. Foster Farms recently decided to expand its operations and has considered relocating outside the City and State. The loss of Foster Farms as a local employer and business would have a significant negative impact on the City and its residents, while the expansion of Foster Farms within the City would increase employment opportunities and provide a valuable contribution to the economic prosperity of the City.

The proposed Economic Development Incentive Agreement will provide for the expansion of Foster Farms at its location in the City of Livingston and, therefore, retain and expand local employment opportunities. Pursuant to the proposed Agreement, Foster Farms would construct an expansion and remodel at its facilities located at 843, Davis Street, Livingston, CA, which, after the expansion will total 298,024 square feet of building occupancies (the Project). The City will provide Foster Farms with an incentive in the form of the payment by the City of certain fees which are required to be paid as a condition of the Project. Those fees consist of

4 th Plan Check	\$250
Building	\$96,958.75
Mechanical	\$7,264.89
Plumbing	\$8,072.100
Electrical	\$8,072.10
CBSC	\$1,200.00
S.M.I.	\$8,400.00
Municipal Facilities	\$60,540.75
Fire Mitigation	\$16,144.20
Police Mitigation	\$22,601.88
General Plan Update	\$150,000.00
Site Plan Review	\$75.00
Winton Parkway Road Expansion	\$21,118.00
Winton Parkway/99 Improvements	\$123,970.00
Main Street Roundabout	<u>\$29,106.00</u>
	\$553,773.67

If Foster Farms were to cease substantially all of its operations in the City within three years of the date a certificate of occupancy was first issued for the Project, Foster Farms would be required to repay the fees to the City, less the amount of \$184,591.20 for each full year that it continued operations after that date.

It is anticipated that the Project will result in the retention of 2,039 jobs and the creation of 7 net new jobs. The incentive package includes the participation of the following:

- The Governor's Office of Business and Economic Development
- Office of Assemblyman Adam Gray

- The Merced County Board of Supervisors
- The Merced County Department of Community and Economic Development
- Worknet Merced County
- Merced Irrigation District

The Project is also expected to result in an estimated/projected tax revenue (increased property taxes) as follows: \$55,860.00

FISCAL IMPACT:

The current available balance in the Economic Opportunity Fund is approximately \$294,000.00. This balance plus future inflows into the Fund will be used to cover fees contained in the agreement.

ATTACHMENTS:

1. Resolution Approving Economic Development Incentive Agreement with Foster Farms
2. Economic Incentive Agreement Between City of Livingston and Foster Poultry Farms
3. California Competes Tax Credit Allocation Agreement.
4. Merced County February 7, 2019 Press Release: Foster Farms Announces Multi-Million Dollar Expansion of Livingston Plant.

3203304.1

RESOLUTION NO. 2019-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LIVINGSTON APPROVING ECONOMIC INCENTIVE AGREEMENT BETWEEN
CITY OF LIVINGSTON AND FOSTER POULTRY FARMS**

WHEREAS, the City Council has established an Economic Opportunity Fund for the purpose of improving the economic well-being and quality of life for the community by creating and/or retaining jobs and supporting or growing incomes and the tax base; and

WHEREAS, Foster Poultry Farms (Foster Farms) is currently located within the City and employs approximately 2,000 people; and

WHEREAS, Foster Farms is preparing to expand its operations and has considered relocation outside the City and the State of California; and

WHEREAS, the loss of Foster Farms as a local employer would have a significant, negative economic impact on the City and its residents and the retention and expansion of Foster Farms within the City will increase local employment opportunities and contribute significantly to the economic prosperity of the City; and

WHEREAS, the City Council has determined that the use of Economic Opportunity Fund to provide an incentive to Foster Farms to remain and expand its operation in the City will further the purposes of that Fund through the retention and creation of jobs in the community.

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

1. The City Council hereby approves the granting of an economic incentive to Foster Farms in an amount not to exceed \$553,773.67, to be used to pay certain fees required as a condition of the expansion and remodel of the Foster Farms facility currently located in the City, and which requires Foster Farms to repay the incentive if it ceases operations in the City within three years of a certificate of occupancy being issued for that expansion and remodel, less one third of the total incentive amount for each full year in which operations did continue during that three year period.
2. The City Council authorizes the City Manager to execute an Economic Incentive Agreement with Foster Farms to provide the above incentive in a form approved by the City Attorney.

Passed and adopted this 2nd day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gurpal Samra, Mayor
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Livingston this 2nd day of April, 2019.

Danna Rasmussen, Deputy City Clerk
of the City of Livingston

3203389.1

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
BETWEEN CITY OF LIVINGSTON AND FOSTER POULTRY FARMS**

This Economic Development Incentive Agreement is made by and between the City of Livingston, a California municipal corporation (“City”), and Foster Poultry Farms, Inc., a _____ corporation (“Foster Farms”) as of _____, 2019.

Recitals

Whereas, Foster Farms is currently located within the City and employs approximately 2,000 people; and

Whereas, Foster Farms is preparing to expand its operations and has considered relocation outside the City and the State of California; and

Whereas, the loss of Foster Farms as a local employer would have a significant, negative economic impact on the City and its residents; and

Whereas, the retention and expansion of Foster Farms within the City will increase local employment opportunities and contribute significantly to the economic prosperity of the City; and

Whereas, the City Council has established an Economic Opportunity Fund for the purpose of improving the economic well-being and quality of life for the community by creating and/or retaining jobs and supporting or growing incomes and the tax base; and

Whereas, the City Council has determined that the use of that fund to provide an incentive to Foster Farms to remain and expand its operation in the City will further the purposes of that Fund through the retention and creation of jobs in the community.

Now Therefore, the Parties agree as follows:

1. Economic Development Incentive. Subject to the terms set forth in this Agreement, the City will provide Foster Farms with an economic development incentive to remain and expand its operations in, the City (“Incentive”). The Incentive shall be in an amount not to exceed \$553,773.67 and shall be provided as set forth below.
2. Project. The term “Project,” as used in this Agreement means an addition to and remodel of an industrial/commercial facility located at 843 Davis Street, Livingston, California, and which, after the expansion, will total 298,024 square feet of building occupancies.
3. Fee Deferral and Payment. The form of the Incentive shall be the payment by the City from City’s Economic Opportunity Fund of certain fees which are required to be paid as a condition of Project construction (“Fees”). The Fees which will be paid by the City pursuant to this Agreement are the following:

4 th Plan Check	\$250
Building	\$96,958.75
Mechanical	\$7,264.89
Plumbing	\$8,072.10
Electrical	\$8,072.10
CBSC	\$1,200.00
S.M.I.	\$8,400.00
Municipal Facilities	\$60,540.75
Fire Mitigation	\$16,144.20
Police Mitigation	\$22,601.88
General Plan Update	\$150,000.00
Site Plan Review	\$75.00
Winton Parkway Road Expansion	\$21,118.00
Winton Parkway/99 Improvements	\$123,970.00
Main Street Roundabout	\$29,106.00

4. Term. The Term of this Agreement shall commence on the date first set forth above and shall expire on the third anniversary date of the date on which a certificate of occupancy is first issued for the Project.

5. Location of Foster Farms in the City. Foster Farms acknowledges that the Incentive provided by this Agreement is in consideration of Foster Farms' agreement to maintain its business operations in the City. Therefore, if Foster Farms ceases operations in the City during the term of this Agreement, Foster Farms shall be responsible for the payment of the total amount of the Fees less the amount of 184,591.20 for each full year that its operations continued after the date on which a certificate of occupancy was first issued for the Project .

6. Prevailing Wages. The Parties agree that the Project shall be wholly undertaken by Foster Farms rather than by City and that the City shall award no contracts for or pertaining to the construction of the Project. Foster Farms is fully aware of the provisions of California Labor Code Section 1720 et seq., regarding payment of prevailing wages in connection with public works and has consulted with its own legal counsel regarding such wage issues and to determine whether receipt of the incentive granted herein will result in the requirement that prevailing wages be paid for any work undertaken by Foster Farms for the Project. In the event prevailing wages are required, it shall be Foster Farms' sole responsibility to comply with all prevailing wage requirements. Foster Farms' execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Foster Farms respecting the applicability of Labor Code Section 1720 et seq., to the Project, and Foster Farms has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code Section 1720 et seq. (including Section 1781) is brought or made against the City in connection with this Agreement or the Project, Foster Farms shall be obligated to defend and indemnify the City with respect to such claim in accordance with Section 10, below.

7. Documentation of Construction Costs. Foster Farms shall provide City with documentation evidencing the total construction costs for the Project within 30 days of the completion of the Project. If 1.75% of the total amount of construction costs is less than the Incentive provided by City herein, Foster Farms will reimburse City the amount necessary to bring the total amount of the Incentive to an amount equal to no more than 1.75% of the total construction costs. Such reimbursement shall be due and payable within 60 days of completion of the Project.
8. Use Tax. Foster Farms agrees to file, or cause to be filed, such permits or other documentation for qualifying construction contracts and purchases in order to have the use tax paid pursuant to those contracts and purchases allocated to the City.
9. Point of Sale for Fuel Sales. Foster Farms agrees to future discussions with City, if City so requests, regarding the designation of the City as a point of sale for the sale of fuel purchased by Foster Farms and other point of sale opportunities.
10. Indemnity. Foster Farms agrees to protect, defend (with legal counsel acceptable to the City), indemnify and hold harmless the City, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind arising out of the execution and performance of this Agreement including, but not limited to, whether the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including but not limited to the City's authority to provide the Incentive provided for herein. This Section shall apply regardless of whether or not the claim, damage, penalty, loss, cost, expense, injury and/or liability complained of arises out of or relates in any way to any negligence on the part of the City. The City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by the Foster Farms and/or Foster Farms' contractors, subcontractors, agents and/or employees. In the event that the City tenders the defense and indemnification of a claim contemplated by this Agreement to the Foster Farms and/or to Foster Farms' contractors, subcontractors, agents and/or employees, the City shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate, independent counsel, at Foster Farms and/or Foster Farms' contractors, subcontractors, agents and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the City, and the City must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.
11. Tax Consequences. Foster Farms is solely responsible for any tax consequences and responsibility from receiving the Incentive provided for herein. Foster Farms has consulted with its own legal counsel regarding such tax consequences. Foster Farms' execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Foster Farms respecting any tax consequences which may result from Foster Farms receiving the Incentive and

Foster Farms has not relied on any such representation in entering into this Agreement. Foster Farms acknowledges that City may issue an IRS 1099 Form reflecting the payment of the Incentive based on independent legal advice obtained from City's Counsel. Foster Farms will submit a W9 prior to receipt of the Incentive Payment.

12. Notices. All notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at the addresses set forth below, or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section.

City: Jose Antonio Ramirez
City Manager
City of Livingston
1416 "C" Street
Livingston, Ca 95334

Foster Farms:

13. Authority to Execute. Each individual signing this Agreement represents and warrants that he or she has the full authority to execute the same on behalf of the Party on whose behalf he or she so signs.

14. Entire Agreement. It is expressly understood and agreed that this Agreement contains the entire Agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties whether written or oral.

15. Attorneys Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

16. Governing Law. This Agreement shall be governed by the law of the state of California.

17. Amendments: The Parties may amend this Agreement only by a writing signed by all the Parties.

18. Assignment. This Agreement may not be assigned by Foster Farms to any other party without the written consent of City.

City:

Foster Farms:

The City of Livingston,
a California Municipal Corporation

By: _____
Name: Jose Antonio Ramirez
Title: City Manager

By: _____
Name:

APPROVED AS TO FORM

Jose M. Sanchez, City Attorney

3158137.1



GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

STATE OF CALIFORNIA ♦ OFFICE OF GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA COMPETES TAX CREDIT ALLOCATION AGREEMENT

This California Competes Tax Credit Allocation Agreement ("Agreement") is by and between Foster Poultry Farms, a California corporation ("Taxpayer"), and the California Governor's Office of Business and Economic Development ("GO-Biz"), hereinafter jointly referred to as the "Parties" or individually as the "Party." All capitalized terms not defined in this Agreement shall have the same meaning as in California Revenue and Taxation Code ("RTC") sections 17059.2 and 23689, and California Code of Regulations, title 10, section 8000 et seq., as in effect on the Effective Date of this Agreement.

In consideration for the mutual covenants and promises in this Agreement, the Parties agree as follows:

- 1. Effective Date.** The effective date ("Effective Date") of this Agreement shall be the date that this Agreement is approved by the California Competes Tax Credit Committee ("Committee").
- 2. Total Credit Award.** GO-Biz, upon approval by the Committee and conditioned upon the requirements set forth in this Agreement, will award Taxpayer a California Competes Tax Credit ("CCTC") in the amount of three million two hundred thousand dollars (\$3,200,000.00) ("Credit"). Specifically, Taxpayer is receiving a CCTC against the "net tax" as defined in RTC section 17039, or the "tax" as defined in RTC section 23036, as applicable, pursuant to RTC section 17059.2 or 23689, as applicable.
- 3. Project/Milestones.** Taxpayer is a poultry processor. Taxpayer has certified in its application that absent award of the CCTC, the project may occur in another state and may terminate all or a portion of its employees in California or relocate all or a portion of its employees in California to another state. Taxpayer has further certified that at least 75% of its net increase of full-time employees will work at least 75% of the time in Livingston (Merced County). Livingston was an Area of High Unemployment at the time Taxpayer submitted its application. In consideration for the Credit, Taxpayer agrees to hire full-time employees and invest in a facility as part of its expansion in Livingston, California (collectively, the "Project"). Further, Taxpayer agrees to satisfy the milestones as described in Exhibit A ("Milestones"). In addition, Taxpayer must maintain the three (3) employee based Milestones ("Total California Full-Time Employees," "Minimum Annual Wage of California Full-Time Employees Hired," and "Cumulative Average Annual Wage of California Full-Time Employees Hired") for a minimum of three (3) taxable years thereafter. In the event Taxpayer employs more than the number of full-time employees, determined on an annual full-time equivalent basis, than required in Exhibit A, for purposes of satisfying the "Minimum Annual Wage of California Full-time Employees Hired" and the "Cumulative Average Annual Wage of California Full-time Employees Hired," Taxpayer may use the wages of any of the full-time employees hired within the required time period. For purposes of calculating the "Minimum Annual Wage of California Full-time Employees Hired" and the "Cumulative Average Annual Wage of California Full-time Employees Hired," the wage of any full-time employee that is not employed by Taxpayer for the entire taxable year shall be annualized. In addition, the wage of any full-time employee hired to fill a vacated position in which a full-time employee was employed during Taxpayer's Base Year shall be disregarded.
- 4. Credit.** The Credit awarded in section 2 of this Agreement will be allocated to Taxpayer by taxable year as set forth in Exhibit A, provided that Taxpayer achieves the Milestones associated with the applicable taxable year, which includes all investments agreed to in the prior years, as set forth in Exhibit A. Taxpayer acknowledges and agrees that, an allocated portion of the Credit is earned by Taxpayer in the taxable year when the Milestones

associated with that allocated portion of the Credit are achieved and to avoid recapture, Taxpayer must maintain the three (3) employee based Milestones for three (3) subsequent taxable years. All required Milestones identified on a taxable year basis in Exhibit A, must be met in order to earn the allocated portion of the Credit. In the event Taxpayer satisfies the taxable year Milestones in an earlier taxable year than described in Exhibit A (no earlier than taxable year 2018), upon written approval from GO-Biz, Taxpayer may claim the allocated portion of the Credit in the earlier taxable year when the Milestones are achieved. If Taxpayer satisfied certain taxable year Milestones in an earlier taxable year than described in Exhibit A (no earlier than taxable year 2018), and received written approval from GO-Biz to claim the Credit in the earlier taxable year, then Taxpayer need only maintain the three (3) employee based Milestones for three (3) subsequent taxable years to avoid recapture as further described in Section 10. In the event that Taxpayer fails to satisfy each Milestone identified in Exhibit A in the taxable year associated with those Milestones including all Investments agreed to in the prior years, no portion of the Credit will be considered earned in that taxable year, but GO-Biz will not unreasonably deny the Credit to Taxpayer for immaterial variances from the Milestones. For purposes of determining whether a variance from the "Net Increase of Full-Time Employees Compared to the Base Year" Milestones is immaterial, GO-Biz shall consider both the number of base year employees Taxpayer retained during the taxable year and any net increase of full-time employees for that taxable year. In determining whether Taxpayer satisfies each Investment Milestone, Taxpayer may include the aggregate amount of Investment made in prior taxable years (beginning with taxable year 2018) that was in excess of the cumulative Investment Milestones for such taxable years. Any allocated portion of the Credit associated with a specific taxable year in Exhibit A, which is not earned in that year due to failure to achieve the Milestones associated with that taxable year will be earned in the taxable year in which the Milestones are met, but in no event later than the last taxable year identified in Exhibit A.

- 5. Taxpayer – Representations and Warranties.** Taxpayer represents and warrants that:
- (a) Taxpayer is validly existing and in good standing under the laws of the State of California, has, or will have the requisite power, authority, licenses, permits, and the like necessary to carry on its business as it is now being conducted and as contemplated in this Agreement, and will, at all times, lawfully conduct its business in compliance with all applicable federal, state, and local laws, regulations, and rules.
 - (b) Taxpayer is not a party to any agreement, written or oral, creating obligations that would prevent Taxpayer from entering into this Agreement or satisfying the terms herein.
 - (c) All the information in the Application and all materials submitted to GO-Biz in Phase II, including, but not limited to, the Statement Regarding California State Tax Liabilities is true and accurate.
 - (d) Taxpayer authorizes the California Franchise Tax Board ("FTB") and GO-Biz to do all of the following:
 - i. To provide and receive information and documents as requested for the purpose of proper determination and administration of the Credit allocated to Taxpayer, including determination of the amount of any recapture of the Credit.
 - ii. To discuss relevant issues pertaining to proper determination and administration of the Credit allocated to Taxpayer, including determination of the amount of any recapture of the Credit.
 - (e) Taxpayer has read the applicable RTC sections 17059.2 and 23689 and California Code of Regulations, title 10, section 8000 et seq. and acknowledges and agrees that such sections are hereby incorporated by reference into this Agreement.
 - (f) None of the Investment identified in Exhibit A will be purchased or leased from a person or entity that is treated as related to Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or from any member of a "controlled group of corporations" (as defined in RTC section 23626) in which Taxpayer is a member.
 - (g) None of the Investment identified in Exhibit A will be due to Taxpayer's acquisition of, or merger with, another business or due to a conversion from a purchase to a lease or vice versa of real or personal property Taxpayer already controls or has acquired.
 - (h) None of the net increase of full-time employees identified in Exhibit A will be due to Taxpayer's acquisition of, or merger with, another business unless the net increase of California full-time employees attributable to that business are above the number of California full-time employees employed by the business at the time of acquisition or merger. In addition, if Taxpayer acquires or merges with a business located outside of

California, and subsequently moves any or all of acquired or merged with business's employees to California on a full-time basis, such employees shall count towards the net increase of full-time employees identified in Exhibit A, including existing employees at the time of acquisition or merger and any subsequently hired full-time employees.

- (i) None of the net increase of full-time employees identified in Exhibit A will be due to a transfer of employees from a person or entity that is treated as related to Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or from any member of a "controlled group of corporations" (as defined in RTC section 23626) in which Taxpayer is a member, unless the transfer is of an employee employed outside of California by a related person or entity and the employee is transferred to California on a full-time basis.
- (j) None of the net increase of full-time employees identified in Exhibit A will be due to employment of any employees that were previously employed by a person or entity that is treated as related to Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or by any member of a "controlled group of corporations" (as defined in RTC section 23626) in which Taxpayer is a member, unless the employment is of an employee that was employed outside of California by a related person or entity.

6. Reporting Requirements. On or before the first day of the fourth month after the close of each taxable year as referenced in Exhibit A, and prior to claiming the Credit on its tax return, Taxpayer shall complete a worksheet provided by GO-Biz to verify successful achievement of the applicable Milestones for the prior taxable year. If Taxpayer successfully achieved the Milestones for the prior taxable year, Taxpayer shall retain the worksheet pursuant to section 16 and submit the worksheet to GO-Biz or the FTB upon request. If Taxpayer did not achieve the applicable Milestones for the prior taxable year, Taxpayer shall submit to GO-Biz the worksheet and a written description of any issues or challenges in achieving the Milestones and any corrective actions being taken or anticipated to be taken in subsequent years. Such submission shall be due to GO-Biz by the first day of the fourth month after the close of each taxable year as referenced in Exhibit A.

7. Franchise Tax Board Review.

- (a) In addition to the reporting requirements in section 6, Taxpayer agrees to comply with the FTB's review of the books and records for purposes of determining if Taxpayer has complied with the requirements of this Agreement.
- (b) For any business other than a Small Business, Taxpayer acknowledges that the FTB shall review the books and records of all taxpayers allocated a Credit pursuant to this Agreement to ensure compliance with the terms and conditions of this Agreement and agrees to cooperate with the FTB in such a review. In the case of a taxpayer that is a Small Business, Taxpayer acknowledges that a review of the books and records of a taxpayer shall be made when, in the sole discretion of the FTB, a review of those books and records is appropriate and agrees to cooperate with the FTB in such a review. If the FTB exercises its discretion to review the books and records of a Small Business taxpayer, the review will be conducted to ensure compliance with this Agreement. The guidelines and procedures for these reviews are outlined in the FTB's Notice #2014-2 dated November 7, 2014.
- (c) These reviews will not constitute an audit of the tax return under Part 10.2 (commencing with section 18401) of the RTC and the regulations thereunder, and will not preclude the FTB from auditing any issue in any taxable year, including a taxable year included in the term of this Agreement.
- (d) If during the review of the books and records, the FTB determines there is a potential material breach of this Agreement by Taxpayer, and notwithstanding RTC section 19542, the FTB shall notify GO-Biz and provide, in writing, detailed information regarding the basis for that determination.

8. Assignment/Transfer. The Credit (or a portion thereof as earned) under this Agreement may be assigned to an "Affiliated Corporation" in accordance with RTC section 23663. As stated in RTC section 23689(i)(1), this Agreement shall not restrict, broaden, or alter the ability of Taxpayer to assign the Credit in accordance with RTC section 23663. In order to transfer this Agreement as a result of a sale or merger, prior written consent of GO-Biz must be obtained or the transfer will be void. Such transfer shall be permitted if GO-Biz determines that the transfer would further the purposes of the CCTC program and benefit California. Prior to GO-Biz consenting to the transfer, the new entity must disclose to GO-Biz the number of California full-time employees it employed at

the time of acquisition or merger and any other information GO-Biz requests that applicants for a CCTC provide pursuant to a CCTC application.

- 9. Material Breach.** A material breach for purposes of this Agreement shall include, but not be limited to:
- (a) Failure to timely furnish the documents described in Section 6 or the information requested by GO-Biz or the FTB relating to Taxpayer's compliance with this Agreement.
 - (b) Material misstatements in any information provided to GO-Biz as part of the application process and/or after this Agreement is signed.
 - (c) Failure to materially satisfy applicable Milestones as set forth in Exhibit A, materiality of which shall be determined by GO-Biz, by the end of the last taxable year identified in Exhibit A.
 - (d) Failure to maintain any of the three (3) employee based Milestones for a minimum of three (3) subsequent taxable years after achieving the Milestone(s).
- 10. Recapture.** In the event of a material breach of the requirements of this Agreement, GO-Biz will notify Taxpayer in writing of the breach and provide Taxpayer with the opportunity to cure the breach within thirty (30) calendar days or such longer period as mutually agreed to in writing between the Parties. If Taxpayer fails to cure the breach within the prescribed timeframe, GO-Biz will notify Taxpayer of the failure, the amount of the Allocation that it will recommend to the Committee to be recaptured, and may recommend termination of this Agreement to the Committee. If the material breach is solely the failure of Taxpayer to satisfy Milestones with respect to an Allocation for a particular taxable year, then the recapture will be limited to that particular taxable year's Allocation and in no event shall a recapture under this Agreement include any Allocation or Allocations that Taxpayer had previously earned provided that Taxpayer satisfies its obligation to maintain the three (3) employee based Milestones for three (3) subsequent taxable years. Upon receipt of recommendations from GO-Biz, the Committee will determine whether to accept or reject GO-Biz's recommendation of recapture, the amount thereof, and the termination of this Agreement, based on Taxpayer's failure to fulfill the terms and conditions of this Agreement. Upon approval of the Committee to recapture some or all of the Allocation awarded for failure of Taxpayer to fulfill the terms of this Agreement, GO-Biz will notify the FTB in writing as required under the applicable statutes and regulations. Any amount of additional tax resulting from that recapture shall be assessed by the FTB in the same manner as provided by RTC section 19051. The additional tax resulting from a recapture will be assessed in the taxable year of Taxpayer in which the Committee's recapture determination occurred.
- 11. Public Records.** Taxpayer acknowledges that GO-Biz is subject to the California Public Records Act (PRA) (Gov. Code, § 6250 et seq.). This Agreement and materials submitted by Taxpayer to GO-Biz may be subject to a PRA request. In such an event, GO-Biz will notify Taxpayer, as soon as practicable that a PRA request for Taxpayer's information has been received, but not less than five (5) business days prior to the release of the requested information to allow Taxpayer to seek an injunction. GO-Biz will work in good faith with Taxpayer to protect the information to the extent an exemption is provided by law, including, but not limited to, notes, drafts, proprietary information, financial information, and trade secret information. GO-Biz will also apply the "balancing test" as provided for under Government Code section 6255, to the extent applicable. Notwithstanding the foregoing, GO-Biz agrees that any information provided to GO-Biz by the FTB, in connection with this Agreement will be treated as confidential tax information protected by Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the RTC, assuming that FTB can rely on such a section and shall not be disclosed to any party, other than personnel of GO-Biz or the Committee, without Taxpayer's prior written consent. Taxpayer acknowledges that this Agreement in whole or in part will be made available to the public at least ten (10) calendar days prior to the Committee hearing. Pursuant to RTC sections 17059.2 and 23689, in the event of approval by the Committee of this Agreement, Taxpayer acknowledges and agrees that GO-Biz will post on its website the following information:
- (a) The name of each taxpayer allocated a Credit;
 - (b) The estimated amount of the Investment by each taxpayer;
 - (c) The estimated number of jobs created or retained;
 - (d) The Credit allocated to each taxpayer; and,

(e) The portion of the Credit recaptured from each taxpayer, if applicable.

- 12. Media Release.** Taxpayer may elect to issue a press release related to this Agreement, but any release shall be approved by GO-Biz in writing prior to such release. Such approval shall not be unreasonably withheld.
- 13. Indemnification/Warranty and Disclaimer/Limitation of Liability.** Taxpayer shall defend, indemnify, and hold GO-Biz and the FTB, its agents or assigns, harmless from and against all claims, damages, and liabilities (including reasonable attorneys' fees) arising from this Agreement due to Taxpayer's breach of this Agreement, or the result of Taxpayer's negligence or willful misconduct. EXCEPT AS PROVIDED FOR UNDER SECTION 14, UNDER NO CIRCUMSTANCES WILL THE STATE OF CALIFORNIA, GO-BIZ, ITS AGENTS OR EMPLOYEES, THE COMMITTEE MEMBERS, THE FTB OR ANYONE ELSE INVOLVED IN THIS AGREEMENT BE LIABLE TO TAXPAYER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT ARISE FROM THIS AGREEMENT.
- 14. Limitation of Remedy.** The only remedy that Taxpayer shall have in the event of breach or alleged breach by GO-Biz, shall be the normal administrative and judicial rights accorded to a taxpayer in the state of California who has been denied a tax credit claimed on its return.
- 15. Integration.** This Agreement (including the exhibits hereto and any written amendments hereof executed by the Parties) constitutes the entire Agreement between the Parties related to this Credit and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to this Credit described herein.
- 16. Record Retention.** Taxpayer shall retain a copy of this Agreement, any exhibits related to this Agreement and any other documents that support the achievement of the milestones in connection with Taxpayer's Application and Credit for a period of no less than four (4) years from the end of the last taxable year identified in Exhibit A.
- 17. Notice.** Within thirty (30) days of the effective date of this Agreement, Taxpayer shall notify GO-Biz, in writing, of the name, address, phone number, and email of its contact person for future communication relating to this Agreement. In addition, Taxpayer agrees to immediately inform GO-Biz of any changes to the name, address, phone number, and email of its contact person. Any notices required or permitted to be given under this Agreement to GO-Biz shall be emailed to CalCompetes@gobiz.ca.gov or mailed to:

GO-Biz
1325 J Street, 18th Floor
Sacramento, California 95814
Attention: Deputy Director, California Competes Tax Credit Program
- 18. Modification.** This Agreement may be amended or modified only in writing signed by all parties. Any modifications to this Agreement that do not alter the amount of the Investment, the net increase in full-time employees, or the minimum and average wages will not require Committee approval. If Committee approval is necessary, the modification of this Agreement will not be valid until the amendment is approved by the Committee.
- 19. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any cure period allowed in this Agreement.
- 20. Ambiguities.** Each Party has had the opportunity to seek the advice of counsel or has refused to seek the advice of counsel. Each Party and its counsel, if appropriate, have participated fully in the negotiation, drafting, review, and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

- 21. Necessary Acts, Further Assurances.** The Parties shall at their own cost and expense execute and deliver any further documents and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.
- 22. Sections and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 23. Consultants' and Attorneys' Fees.** Each of the Parties shall be responsible for, and pay in their entirety, its respective fees, costs, and expenses in connection with the subject matter of this Agreement and any audit that may be conducted as a result of the transaction contemplated herein. Notwithstanding RTC section 19717, under no circumstances is any Party to this Agreement entitled to attorneys' fees with regard to litigation resulting from this Agreement.
- 24. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.
- 25. Severability.** If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 26. Approval.** This Agreement shall not be binding until it has been approved by the Committee during a duly noticed Committee meeting.
- 27. Execution.** This Agreement may be executed in parts, by fax, or other similar electronic means.
- 28. Governing Law and Consent to Jurisdiction.** This Agreement will be governed, construed, and enforced according to the laws of the State of California without regard to its conflict of laws rules. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of any state court located within Sacramento County, State of California in connection with any matter arising out of this Agreement or the transactions contemplated under this Agreement.

Remainder of the page is intentionally left blank. Signature page immediately follows.

Governor's Office of Business and Economic Development

By: 
Name: Cheryl Akin

Title: Deputy Director

Date: October 23, 2018 | 13:16 PDT

TAXPAYER

Foster Poultry Farms

By: 
Name: Doug Kooren

Title: CFO

Date: October 23, 2018 | 08:07 PDT

Exhibit A Milestones

Taxpayer: Foster Poultry Farms

	2017 Tax Year (Base)	2018 Tax Year	2019 Tax Year	2020 Tax Year	2021 Tax Year	2022 Tax Year	Total
Total California Full-Time Employees¹	2,039	2,042	2,043	2,044	2,045	2,046	
Net Increase of Full-Time Employees Compared to the Base Year		3	4	5	6	7	
Minimum Annual Wage of California Full-Time Employees Hired		\$33,000	\$33,000	\$33,000	\$33,000	\$33,000	
Cumulative Average Annual Wage of California Full-Time Employees Hired		\$33,000	\$33,000	\$33,000	\$33,000	\$33,000	
Investments		\$0	\$16,875,000	\$16,875,000	\$16,875,000	\$16,875,000	\$67,500,000
Tax Credit Allocation		\$640,000	\$640,000	\$640,000	\$640,000	\$640,000	\$3,200,000

¹ Determined on an annual full-time equivalent basis



James L. Brown
County Executive Officer

2222 "M" Street
Merced, CA 95340
(209) 385-7636
(209) 385-7673 Fax
www.countyofmerced.com

Equal Opportunity Employer

FOR IMMEDIATE RELEASE

CONTACT: Mike North 209.726.2744

February 7, 2019

FOSTER FARMS ANNOUNCES MULTI-MILLION DOLLAR EXPANSION OF LIVINGSTON PLANT

MERCED – Today, Foster Farms President and CEO Laura Flanagan announced a multi-million dollar capital investment project that will support an expansion and upgrade of the company's poultry processing facility in Livingston.

The multi-million dollar investment will expand the facility's product lines, which currently provide 2,032 jobs in Merced County. Additional jobs will be added as part of the expansion.

Construction for the Foster Farms expansion project has already begun, with completion scheduled for September 2019. The expansion has been made possible by a \$6.5 million economic incentive package, developed by state and local government leaders working in concert with Foster Farms executive staff.

The package includes resources from California Competes, the California Energy Commission Food Production Investment Program, the Merced County Expanded Subsidized Employment Program, the Merced County On-the-Job Training Program, as well as incentives from the City of Livingston.

The following organizations played major roles in developing the incentive package:

- The Office of Assemblyman Adam Gray
- The Governor's Office of Economic Development
- The Merced County Board of Supervisors
- The Merced County Department of Community and Economic Development
- Worknet Merced County
- The City of Livingston

"This is a perfect example of government working with local business to help keep jobs in the Valley and grow our economic base," said Chairman Lloyd Pareira of the Merced County Board of Supervisors. "Not only do we tell people that we're business friendly—we show it."

"The expansion of a local company that employs more than 2,000 people is of particular importance in a community where every job and source of revenue counts," said Vice-Chairman Rodrigo Espinoza of the Merced County Board of Supervisors, who also represents Livingston as the District 1 Supervisor. "I would like to personally thank the Merced County Community and Economic Development team for spearheading this and working so hard to create a competitive incentive package."

"This investment by Foster Farms is a major win for the entire Merced County community," said Mark Hendrickson, Director of Community and Economic Development for Merced County. "I'm quite proud of the facilitative role my organization played and wish to congratulate each of our partners who worked at the speed

of business to support their effort.”

“The City of Livingston prides itself for having such a dynamic and community-oriented company and we are pleased to see Foster Farms continue to grow and prosper here,” said Gurpal Samra, Mayor of the City of Livingston. “We look forward to continuing our close and rewarding partnership for many more years.”

“Foster Farms is expanding its Livingston operation to allow for future growth and diversification of our customer mix on the West Coast,” Flanagan said. “Foster Farms first opened a plant in the City of Livingston in 1959. Since then, we have been very pleased with the quality of the workforce, the access the location provides us to California markets, and the partnership of state and local officials in helping us to succeed in California.”

About Foster Farms

Since 1939, West Coast families have depended on Foster Farms for premium quality chicken and turkey products. Family-owned and operated, the company continues its legacy of excellence and commitment to quality established by its founders, Max and Verda Foster. Foster Farms specializes in fresh, all-natural chicken and turkey products. Based in California’s Central Valley, with ranches in the Pacific Northwest, the company’s fresh chicken and turkey are produced in or near each region served. Foster Farms also produces delicious pre-marinated, ready-to-cook and fully cooked products that meet the quality and convenience needs of today’s home cooks, retailers, warehouse clubs and foodservice customers. The company’s commitment to excellence, honesty, quality, service and people is a source of great pride, and, a longtime family tradition. For more information, visit www.fosterfarms.com.

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For more information regarding Merced County, please visit our website at www.countyofmerced.com

STAFF REPORT

AGENDA ITEM: Approval of Warrant Register dated March 27, 2019

MEETING DATE: April 2, 2019

PREPARED BY: Nancy Fuentes, Sr. Account Clerk

REVIEWED BY: Jose Antonio Ramirez, City Manager

RECOMMENDATION:

Approve warrant register dated March 27, 2019

DISCUSSION:

In accordance with Section 37202 of the Government Code of the State of California there is presented here with a summary of the demands against the City of Livingston covering obligations to be paid during the period of:

March 19, 2019 – April 2, 2019

Each demand has been audited and I hereby certify to their accuracy and that there are sufficient funds for their payment as of this date.

**IT IS HEREBY RECOMMENDED THE CITY COUNCIL
APPROVE THE REGISTER OF DEMANDS AS FOLLOWS:**

GENERAL WARRANTS.....\$	\$ 421,352.86	#92488-92605
PAYROLL WARRANTS.....\$	\$ 204,832.18	#40791-40807
TOTAL WARRANTS.....\$	\$ 626,185.04	

ATTACHMENTS:

Accounts payable checks by date, summary by check number register.

Accounts Payable

Checks by Date - Summary by Check Date

User: nfuentes
 Printed: 3/27/2019 4:07 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
92488	ASI	Administrative Solutions Inc	03/18/2019	60.00
92489	AFA	American Fidelity Assurance Company	03/18/2019	3,580.74
92490	AFAFLEX	American Fidelity Assurance Company	03/18/2019	241.64
92491	FAMILYSU	California State	03/18/2019	2,366.29
92492	INSHP	In-Shape Health Clubs, Inc	03/18/2019	180.00
92493	KEEN	Keenan & Associates	03/18/2019	94,677.97
92494	meyers	Meyers Nave	03/18/2019	12,703.94
92495	premier	Premier Access Dental	03/18/2019	2,668.70
92496	VISION	Vision Service Plan - CA	03/18/2019	448.56
Total for 3/18/2019:				116,927.84
92497	AMEREXPR	American Express	03/21/2019	915.30
92498	BANKCARD	Bank of America Business Card	03/21/2019	4,669.77
92499	TRUEVAL	Livingston True Value	03/21/2019	1,182.61
92500	Lowe's	Lowe's	03/21/2019	270.10
92501	LIVFARM	Valley Farm Supply Stores Inc.	03/21/2019	2,986.54
Total for 3/21/2019:				10,024.32
92503	Monica	Monica Aguilar	04/02/2019	150.00
92504	alameda3	Alameda Country Sheriff	04/02/2019	1,225.00
92505	A.M. PEC	ALBERT M. PECHE	04/02/2019	2,358.74
92506	allplay	All About Play	04/02/2019	6,655.36
92507	Alvdanie	Elizabeth Alvarez	04/02/2019	70.00
92508	amercran	American Crane Rental	04/02/2019	4,189.50
92509	A1A	Arturo Uribe	04/02/2019	190.00
92510	calnet	AT&T	04/02/2019	236.89
92511	AFSCME	AFSCME District Council 57 Attn: Finance	04/02/2019	674.70
92512	UB*01809	BECK COMMUNITY BUILDERS, INC.	04/02/2019	19.20
92513	BigCreek	Big Creek	04/02/2019	16.67
92514	CALJUST	Calif. Dept of Justice	04/02/2019	543.00
92515	CAPE01	California Association for Property & Evidence	04/02/2019	45.00
92516	cavanaugh	Cavanaugh & Associates, P.A.	04/02/2019	2,500.00
92517	Cen.Cal.	Cen.Cal.United	04/02/2019	500.00
92518	CenCalHo	CenCal Holdings Inc.	04/02/2019	2,100.00
92519	CVC	Central Valley Concrete Inc.	04/02/2019	2,182.10
92520	chevprod	Chevron Products Company	04/02/2019	345.44
92521	chiefsup	Chief Supply Corp.	04/02/2019	220.00
92522	cityliv	City of Livingston c/o L & L Dist. Irrigation	04/02/2019	19.20
92523	MOVING	DEPARTMENT 6180 ComTech21	04/02/2019	73.65
92524	wc3	West Coast Code Consultants, Inc.	04/02/2019	21,931.78
92525	cooling	Cooling Shedd Air Conditioning	04/02/2019	397.79
92526	corelogi	CoreLogic Information Solution	04/02/2019	200.00
92527	CortesCl	Claribel Cortes	04/02/2019	150.00
92528	COVANTA	Covanta Energy, LLC.	04/02/2019	164.25
92529	CSG Cons	CSG Consultants, Inc.	04/02/2019	5,075.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
92530	CSJVRMAL	CSJVRMA - Liability	04/02/2019	31,391.00
92531	CSJVMAW	CSJVRMA - Workcomp	04/02/2019	73,519.00
92532	depfores	Depart. of Forestry & Fire Protection	04/02/2019	1,134.70
92533	durand	Daniela Duran	04/02/2019	150.00
92534	ELITEUNI	ELITE UNIFORM	04/02/2019	89.90
92535	SANJOAQ	Ernest Packaging Solutions	04/02/2019	1,677.59
92536	EZAUTO	EZ Auto Supply - Napa	04/02/2019	2.22
92537	NEWACCES	First Communications, LLC	04/02/2019	72.11
92538	frontier	Frontier	04/02/2019	2,092.22
92539	frontie2	Frontier Communications Corp Frontier Co	04/02/2019	151.32
92540	GUTIERRC	CARMEN FUENTES	04/02/2019	70.00
92541	GOLSTA	Golden State Flow Measurement	04/02/2019	2,437.42
92542	MariaGon	Maria Gonzalez	04/02/2019	150.00
92543	gonzalth	Thania Gonzalez	04/02/2019	150.00
92544	gouveia	Gouveia Engineering Inc.	04/02/2019	44,556.66
92545	avenet	Government Brands Shared Services GovO	04/02/2019	1,450.00
92546	guardall	Guardian Alliance Investigators, LLC	04/02/2019	1,300.00
92547	USABLUE	HD Supply Facilities Maint LTD	04/02/2019	3,337.96
92548	UB*01812	ARIEL HERNANDEZ	04/02/2019	112.94
92549	Hewlett	Hewlett-Packard Financial Services Co.	04/02/2019	1,133.84
92550	hillumbr	Hilmar Lumber	04/02/2019	40.93
92551	hilmarr	Hilmar Ready Mix Rockery	04/02/2019	214.42
92552	HOFFMAN	Hoffman Security, Inc.	04/02/2019	10.78
92553	hopkinst	Hopkins Technical Products, Inc.	04/02/2019	923.05
92554	IAPE	IAPE	04/02/2019	50.00
92555	IEH	IEH Laboratories	04/02/2019	72.00
92556	UB*01811	ILLEMY BEAUTY SALON	04/02/2019	139.00
92557	Imagesou	Image Source	04/02/2019	1,049.66
92558	jlanal	J L Analytical Services Inc.	04/02/2019	129.50
92559	jolley	Bryant L. Jolley	04/02/2019	2,400.00
92560	JORGENSE	Jorgensen Company	04/02/2019	247.83
92561	kamps	Kamps Propane	04/02/2019	4.29
92562	krazan	Krazan & Associates Inc.	04/02/2019	1,065.00
92563	LNCURTIS	L.N. Curtis and sons	04/02/2019	27,487.89
92564	Guillerm	Guillermina Lara de Solorio	04/02/2019	150.00
92565	LIBERTY	Liberty Market	04/02/2019	5.36
92566	Matco	Matco Tools Distributor Inc.	04/02/2019	16.70
92567	MODESTOB	McClatchy Newspaper Inc.	04/02/2019	410.10
92568	MERSUN	McClatchy Newspapers Inc.	04/02/2019	396.00
92569	Kristina	Kristina Medina	04/02/2019	150.00
92570	MERCEDEL	Merced County Registrar of Voters	04/02/2019	8,809.22
92571	MID	Merced Irrigation District	04/02/2019	3,547.74
92572	Merchant	Pearlie Merchant	04/02/2019	287.00
92573	midvalle	Mid Valley IT	04/02/2019	7,500.00
92574	MISSION	Mission Linen Supply	04/02/2019	159.56
92575	montevis	Monte Vista Small Animal Hospital	04/02/2019	177.68
92576	natltoxi	National Toxicology Laboratories, Inc.	04/02/2019	15.00
92577	NEXTEL	Nextel Communications	04/02/2019	1,409.97
92578	Officede	Office Depot	04/02/2019	286.58
92579	OjedaM	Mario Ojeda	04/02/2019	70.00
92580	OPERATE	Operating Engineers Local #3	04/02/2019	360.00
92581	OPERATIN	Operating Engineers Local #3	04/02/2019	366.00
92582	oreillya	O'Reilly Automotive Store Inc.	04/02/2019	160.92
92583	pge	Pacific Gas & Electric Company	04/02/2019	9.04
92584	UB*01810	JOSE PADILLA	04/02/2019	102.75
92585	PARAMOUN	Paramount Pest Control Inc.	04/02/2019	315.00
92586	PREMIER	Premier Access Dental	04/02/2019	870.05

Check No	Vendor No	Vendor Name	Check Date	Check Amount
92587	LeoPulid	Leo Pulido Jr	04/02/2019	250.00
92588	RAND	Randik Paper	04/02/2019	542.19
92589	MariaR	Maria Rodriguez	04/02/2019	150.00
92590	SAFETLIT	Safe T Lite of Modesto Inc.	04/02/2019	317.52
92591	MonicaSa	Monica Sanchez	04/02/2019	150.00
92592	shredit	Shred-it USA LLC	04/02/2019	294.25
92593	St. Fran	St. Francis Electric, LLC.	04/02/2019	882.00
92594	TOTLCOM	TOTLCOM	04/02/2019	363.00
92595	TRANSUNI	Trans Union LLC	04/02/2019	288.40
92596	unitedro	United Rotary Brush Corp.	04/02/2019	2,689.75
92597	unum	Unum	04/02/2019	2,917.65
92598	VALLCOFF	VALLEY COFFEE	04/02/2019	122.75
92599	vasqrosa	ROSA VASQUEZ	04/02/2019	150.00
92600	VERIZON	Verizon Wireless	04/02/2019	2,190.95
92601	SunilVer	Sumil Verma DC	04/02/2019	140.00
92602	VISION	Vision Service Plan - CA	04/02/2019	814.34
92603	BRESHEAR	W.H. Breshears, Inc.	04/02/2019	4,877.65
92604	WGRSOUTH	WGR SOUTHWEST, INC.	04/02/2019	290.00
92605	ZEEMED	Zee Medical Service Co., Inc.	04/02/2019	387.78

Total for 4/2/2019: 294,439.40

Report Total (117 checks): 421,391.56



MEETING MINUTES

CLOSED SESSION/REGULAR MEETING LIVINGSTON CITY COUNCIL FEBRUARY 19, 2019

A Closed Session/Regular Meeting of the Livingston City Council was held on February 19, 2019, in the City Council Chambers with Mayor Samra presiding.

CALL TO ORDER

Mayor Samra called the meeting to order at 6:05 p.m.

ROLL CALL

- Mayor Gurpal Samra
- Mayor Pro-Tem Raul Garcia (Excused Absence)
- Council Member Juan Aguilar
- Council Member Maria Baptista
- Council Member Gagandeep Kang

Mayor Samra opened and subsequently closed Citizen Comments at 6:07 p.m., as there were no comments from the public.

CLOSED SESSION

Mayor Samra opened the meeting for public comments at 6:09 p.m. There were no comments and the Council went into Closed Session immediately thereafter to discuss the following matters:

1. Conference With Real Property Negotiator
(Government Code Section 54956.8)
Real Property:
APN: 024-011-016
APN: 143-297-007
Negotiation Parties for City: City Manager/City Attorney
Under Negotiation: Potential Property Sale

2. Conference with Legal Counsel – Potential Litigation
(Government Code Section 54956.9(d)(4))
Number of Cases: 1

3. Conference with Labor Negotiator
(Government Code Section 54957.6)
Labor Negotiator: Jose Antonio Ramirez, City Manager
Employee Organizations: OE3 - Police Supervisory Employees Association.
OE3 - Management/Confidential Bargaining Unit
OE3 - Livingston Police Officer Association
AFSCME – Public Works and Parks Unit
All Represented and Unrepresented City Employees

REGULAR MEETING

Mayor Samra called the meeting to order at 7:03 p.m.

PLEDGE OF ALLEGIANCE

The pledge of allegiance to the flag was recited.

ROLL CALL

- Mayor Gурpal Samra
- Mayor Pro-Tem Raul Garcia (Late Attendance)
- Council Member Juan Aguilar
- Council Member Maria Baptista
- Council Member Gagandeep Kang

CLOSED SESSION ANNOUNCEMENTS

No reportable action was taken.

CHANGES TO THE AGENDA

None.

AWARDS, PRESENTATIONS, PROCLAMATIONS

1. Invocation by Police Chaplain Mike Outten followed by Introduction and swearing-in of new Police Officer Tajinder Dhami, Reserve Police Officer Michael Erickson, and Police Dispatcher Lydia Pinon by Police Chief Ruben Chavez and Mayor Gурpal Samra.

New police officers were introduced by Police Chief Chavez, and sworn in by Mayor Samra.

The new officers thanked their family and friends for their support.

City Council took a break between 7:35 p.m. and 7:45 p.m.

Mayor Pro-Tem Garcia entered the Council of Chambers at 7:45 p.m.

2. San Joaquin Joint Powers Authority - Presentation by Rene Gutierrez.

Rene Gutierrez gave a power point presentation regarding regional rail services for both ACE and Amtrak. The presentation included information about new grant funding opportunities, route services, new stations, expanded schedule, and projected ridership.

Mayor Samra asked for the criteria for station selection.

Rene Gutierrez replied that there is currently no set criteria, but that he would gladly provide that information when it is available.

City Manager Ramirez noted that the City initiated a commuter study for ACE. The City also pledged Measure V funds for the station platform. The City is also working with large community employers for their support.

Mayor Samra opened Public Comments at 8:02 p.m.

County Supervisor Espinoza noted that rail services help bridge the cultural and health care gaps between Merced County and the Bay Area.

Mayor Samra closed Public Comments at 8:07 p.m., as there were no further comments from the public.

ANNOUNCEMENTS AND REPORTS

Supervisor Rodrigo Espinoza Announcements and Reports.

County Supervisor Espinoza announced that he had a meeting with a Deputy District Attorney regarding reducing gang violence and gang activity. Moreover, he will be hosting Town Hall meetings in Planada (May 15th at 6:00 p.m., most likely at Planada Middle School) and hopefully in South Merced sometime soon.

City Manager Ramirez noted that the City would like to continue pursuing Rule 21 funding to underground utilities at locations like B Street, between Main Street and Winton Parkway.

City Staff Announcements and Reports.

Planning Director Hatch gave a department update. He noted that the Governor's office has filled housing lawsuits against several City's throughout the State, including two in Merced County (Atwater and Dos Palos). The City of Livingston has a certified Housing Element. The City provides the State with annual reports showing housing activities and progress towards housing goals. In addition, the City recently hosted a pre-development meeting for a 400-unit apartment complex near Livingston High School.

Public Works Director Chavarria gave an activity report which included storage tank maintenance, water service repairs, exercise equipment installation at Gallo Park, Wells #14 and #16 TCP project, illumination and installation of the John Vance memorial, Fred Worden Fence Project, Main Street sidewalk inspection, and sidewalk repairs.

Mayor Samra noted that there are overgrown bushes along Evergreen Street that need to be trimmed because they block pedestrian access.

Finance Director Grant noted that the City has met all its obligations with dissolving the Redevelopment Agency. The Enhance Infrastructure District has somewhat replaced the Redevelopment Agency, but the City would have to plan to engage in this program.

City Manager Announcements and Reports.

City Manager Ramirez noted that the City is distributing surveys to help obtain Park funds through Proposition 68. The City is working at attracting an electric engine company (planes and automobiles) to improve job growth. Moreover, the City will soon have a presentation regarding the City's water and energy efficiency survey.

Katherine Schell-Rodriguez, P.O. Box 163, asked how close the City is to purchasing the Livingston Farmers Association (LFA) building.

City Manager Ramirez noted that LFA has accepted the City's offer, but the transaction has not been finalized.

Wapinder Kang, resident of Livingston, asked if both LFA buildings would be purchased.

City Manager Ramirez replied that both buildings would be purchased.

City Council Members' Announcements and Reports.

None.

Mayor's Announcements and Reports.

None.

CITIZEN COMMENTS

Mayor Samra opened and closed Citizen Comments at 8:44 p.m., as there were no comments from the public.

CONSENT AGENDA

3. Approval of Minutes of Meeting Held on December 18, 2018.
4. Approval of Minutes of Meeting Held on January 08, 2019.
5. Approval of Warrant Register Dated February 13, 2019.

Mayor Samra opened and closed the Consent Agenda at 8:45 p.m., as there were no comments from the public.

Motion: M/S Garcia/Aguilar to approve the Consent Agenda. The motion carried by voice vote.

DISCUSSION AND POTENTIAL ACTION ITEMS

6. Resolution Approving the Sale of Properties Located at 2949 Tehama Drive.

City Manager Ramirez introduced this item. This is a residential home located in southeast Livingston, by the sports complex.

Mayor Samra opened and closed Public Comments at 8:50 p.m., as there were no comments from the public.

Mayor Samra made a motion to approve this item. The motion died due to a lack of a second.

7. Resolution Approving the Sale of Properties Located Near the Southwest Corner of Olive Avenue and North Main Street.

City Manager Ramirez introduced this item. This is a 2.7-acre property that originally belonged to Foster Farms. The property was given to the City in exchange for right-of-way. The potential purchaser would like to either develop apartments or rezone the property to light industrial.

Mayor Samra opened Public Comments at 8:52 p.m.

Katherine Schell-Rodriguez, P.O. Box 163, noted that the report mentioned the fiscal impact would generate funds for the Public Works Department.

City Manager Ramirez replied that this property was originally exchanged for City right-of-way, which impacted the City's Public Works Department.

Mike Torres, 1618 H Street, asked if this site was originally entitled for a Fire Station.

Council Member Aguilar replied that the City is currently looking at other sites for a Fire Station.

City Manager Ramirez replied that this site is not zoned for a Public Facility, it is zoned for high density residential.

County Supervisor Espinoza gave some background information regarding the subject site. He noted that the property's General Plan Designation was probably changed several years ago.

Council Member Garcia noted that this item should be continued to give staff time to research the history and zoning of the subject site.

Motion: M/S Garcia/Kang to continue this item. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	McCabe, Aguilar, Sicaireos, Samra, Soria
NOES:	Council Members:	None
ABSENT:	Council Members:	None

8. Resolution to Making Appointments to Fill Vacancies on the Planning Commission.

Planning Director Hatch introduced this item. The openings are for one 1-year term and one 4-year term. The City received 8 applications, including one from the current alternate Planning Commissioner.

Mayor Samra opened Public Comments (to the public and Planning Commission Candidates) at 9:10 p.m.

Katherine Schell-Rodriguez, P.O. Box 163, asked if there are any prohibitions or conflicts of interest about appointing City employees to the Planning Commission.

City Attorney Sanchez replied that there is no State law prohibiting a City employee from being on the Planning Commission.

Robert Wallis, 1697 Spruce Court, asked if all positions could be filled at the same time.

Mayor Samra closed Public Comments at 9:15 p.m.

Motion: M/S Garcia/Aguilar to appoint Mr. Bassi for a full-time 4-year term to the Planning Commission. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	McCabe, Aguilar, Sicairos, Samra, Soria
NOES:	Council Members:	None
ABSENT:	Council Members:	None

Motion: M/S Garcia/Kang to appoint Mr. Bath for a full-time 1-year term to the Planning Commission. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	McCabe, Aguilar, Sicairos, Samra, Soria
NOES:	Council Members:	None
ABSENT:	Council Members:	None

Motion: M/S Garcia/Aguilar to appoint Mr. Roth to the alternate position with the Planning Commission. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	McCabe, Aguilar, Sicairos, Samra, Soria
NOES:	Council Members:	None
ABSENT:	Council Members:	None

9. Swearing-In of Newly Appointed Planning Commissioners.

Mayor Samra swore in the new commissioners.

ADJOURNMENT

The meeting was adjourned by consensus at approximately 9:25 p.m.

Deputy City Clerk of the City of Livingston

APPROVED:

Mayor or Mayor ProTempore

The written meeting minutes reflect a summary of specific actions taken by the City Council. They do not necessarily reflect all of the comments or dialogue leading up to the action. All meetings are digitally recorded and are an official record of the meeting's proceedings. Digitally recorded verbatim minutes are available, upon request, and may be obtained at Livingston City Hall.



MEETING MINUTES

CLOSED SESSION/REGULAR MEETING LIVINGSTON CITY COUNCIL MARCH 5, 2019

A Closed Session/Regular Meeting of the Livingston City Council was held on March 5, 2019, in the City Council Chambers with Mayor Samra presiding.

CALL TO ORDER

Mayor Samra called the meeting to order at 6:08 p.m.

ROLL CALL

- Mayor Gurpal Samra
- Mayor Pro-Tem Raul Garcia
- Council Member Maria Baptista-Soto
- Council Member Juan Aguilar (Late Attendance)
- Council Member Gagandeep Kang

Mayor Samra opened and subsequently closed Citizen Comments at 6:08 p.m., as there were no comments from the public.

CLOSED SESSION

Mayor Samra opened Public Comments at 6:10 p.m.

Jesus Mendoza, a real estate agent from Soldavi Realty in Merced, introduced himself and his clients who placed the accepted offer for the property at 2949 Tehama Drive (being discussed during Closed Session).

Mayor Samra closed Public Comments at 6:12 p.m., as there were no further comments from the public. The Council went into Closed Session immediately thereafter to discuss the following matters:

1. Conference With Real Property Negotiator

(Government Code Section 54956.8)

Real Property:

APN: 024-011-016

APN: 143-297-007

Negotiation Parties for City: City Manager/City Attorney

Under Negotiation: Potential Property Sale

2. Conference with Legal Counsel – Potential Litigation

(Government Code Section 54956.9(d)(4))

Number of Cases: 1

3. Conference with Labor Negotiator

(Government Code Section 54957.6)

Labor Negotiator: Jose Antonio Ramirez, City Manager

Employee Organizations: OE3 - Police Supervisory Employees Association.

OE3 - Management/Confidential Bargaining Unit

OE3 - Livingston Police Officer Association

AFSCME – Public Works and Parks Unit

All Represented and Unrepresented City Employees

REGULAR MEETING

Mayor Samra called the meeting to order at 7:05 p.m.

PLEDGE OF ALLEGIANCE

The pledge of allegiance to the flag was recited.

ROLL CALL

- Mayor Gurpal Samra
- Mayor Pro-Tem Raul Garcia
- Council Member Maria Baptista-Soto
- Council Member Juan Aguilar
- Council Member Gagandeep Kang

CLOSED SESSION ANNOUNCEMENTS

No reportable action was taken. Closed Session will be continued at a later date to further discuss labor negotiations.

CHANGES TO THE AGENDA

Item #10 was tabled. Item #8 was moved ahead of Item #5.

ANNOUNCEMENTS AND REPORTS

Diana Pedroso, representing Ana Caballero's local office in Merced, noted that she looks forward towards building a relationship with Livingston staff and community members.

Supervisor Rodrigo Espinoza Announcements and Reports.

Supervisor Espinoza noted that he attended the Latino Caucus in Napa, California. A focus of the meeting was to ensure that all residents, documented or undocumented, are being accounted for at the next Census. This will have significant fiscal impacts to grant funding as many grants are based on population. Moreover, the County can do a better job at bringing more electronic vehicle charging stations to encourage economic development.

City Staff Announcements and Reports.

Parks and Recreation Superintendent Benoit noted that basketball season is over. The Recreation Department will soon start softball and baseball season. On March 16th, the City will host the dedication for fallen Military Serviceman, Benito Aguilar. The City has been collecting surveys for a recreation project to improve recreation activities in town. Lastly, the City will soon host the first ever color run on May 11th.

Fire Chief Carter gave an activity report for February. There was a total of 68 medical aids, 7 vehicle accidents (County), 2 alarm soundings (County), etc. For 2019 there has been a total of 259 incidents reported to the Fire Department. Staff training included PG&E response and auto extrication. The John Vance Memorial was displayed in front of the Fire Station. The Fire Department is currently doing fire inspections at Livingston High School.

Council Member Aguilar asked for updates on the Type 6 fire engine.

Fire Chief Carter noted that the Type 6 fire engine should be in service at the Livingston Fire Station within the next month.

Police Chief Chavez thanked community volunteers. The City's tour bus parking zone has begun and should bring some economic development. The Police Department assisted with LMS Career Day and College Day. The Police Department participated with the Polar Plunge for Special Olympics which raised \$1,500.00. The Police Explorer's have assisted with the Recreation Center survey. The City ranked #50 safest City in the State. National Drug Take Back Day will be April 27th at the Police Department lobby.

City Manager Announcements and Reports.

City Manager Ramirez noted the importance of the Census population count. Also, the City encourages the community to apply for business licenses before working within our jurisdiction. The City will have a meeting later this month (March 22) at Foster Farms to discuss electric engine production plants. The City has compiled the Measure V 5-year project list. The Livingston Community Health Network will have a ribbon cutting ceremony on March 8th.

City Council Members' Announcements and Reports.

Mayor Pro-Tem Garcia congratulated the Merced County Special Olympics team on their recent victories.

Mayor's Announcements and Reports.

Mayor Samra announced that the City will have Special Meeting this Thursday at 5:30 p.m.

CITIZEN COMMENTS

Mayor Samra opened and closed Public Comments at 7:50 p.m., as there were no comments from the public.

CONSENT AGENDA

1. Approval of Minutes of Meeting Held on January 15, 2019.
2. Approval of Minutes of Meeting Held on February 05, 2019.
3. Approval of Warrant Register Dated February 27, 2019.
4. Resolution #2019-11 Increasing the Budget to Appropriate \$54,231.58 of the Home Program Income Fund Unappropriated Fund Balance for Fiscal Year 2018/2019.

Motion: M/S Garcia/Aguilar to approve the Consent Agenda. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Garcia, Samra
NOES:	Council Members:	None
ABSENT:	Council Members:	None

DISCUSSION AND POTENTIAL ACTION ITEMS

[Secretary's Note: Item #8 was moved ahead of Item #5.]

8. Resolution Approving the Sale of Properties Located at 2949 Tehama Drive.

Mayor Pro-Tem Garcia recused himself and left the Council of Chambers Meeting Room. There is no financial conflict of interest, but for the abundance of caution he recused himself as he lives in close proximity to the subject site.

City Manager Ramirez introduced this project. This property has been leased to local residents over the past few years. The property was appraised at \$260,000.00. The buyers offered over \$272,000.00 and would be sharing the closing cost. This funding could be used to purchase property.

Mayor Samra opened Public Comments at 7:55 p.m.

Jesus Mendoza, realtor from Merced Soldavi Realty, introduced himself and his clients.

Oscar Lopez and Anna Pimentel introduced themselves and mentioned that they want to stay local and participate in the community. Owning this home would help them achieves this dream.

Mayor Samra closed Public Comments 7:58 p.m., as there were no further comments from the public.

Council Member Aguilar noted that the funds for this project should be used for a new fire station (either land, plans, remodel, etc.)

Mayor Samra noted that public safety is important, and the City should invest in those departments.

Motion: M/S Aguilar/Baptista to adopt Resolution #2019-12 Approving the Sale of Properties Located at 2949 Tehama Drive.. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Samra
NOES:	Council Members:	None
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	Garcia

5. Resolution to Accept the Public Improvements for the Country Villas No. 4 Subdivision and Authorize the City Manager to De-Obligate the Improvement Securities Committed for said Improvements.

Mayor Pro-Tem Garcia re-entered after Item #8 was voted on, at 8:01 p.m.

Noe Martinez, from the City Engineer's Office, introduced this item.

City Attorney Sanchez noted that the subdivision agreement requires conditions and bonds.

Mayor Samra opened and closed Public Comments 8:05 p.m., as there were no comments from the public.

Motion: M/S Garcia/Samra to adopt Resolution #2019-13 to accept the Public Improvements for the Country Villas No. 4 Subdivision and Authorize the City Manager to De-Obligate the Improvement Securities Committed for said Improvements. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Garcia, Samra
NOES:	Council Members:	None
ABSENT:	Council Members:	None

6. Resolution Approving a Third Amendment to the Employment Agreement between the City of Livingston and Ruben Chavez for the Position of Police Chief extending the Current Term for an Additional Three (3) years.

City Manager Ramirez introduced this item. The City will begin a succession plan and personnel will go through professional development.

City Attorney Sanchez noted that the resolution would be amended to be a 2-year contract. There would be additional changes to severance package, and extending the notice of termination by Chief to 90 days, etc.

Mayor Samra opened and closed Public Comments 8:12 p.m., as there were no comments from the public.

Motion: M/S Baptista/Kang to adopt Resolution #2019-14 Approving a Third Amendment to the Employment Agreement between the City of Livingston and Ruben Chavez for the Position of Police Chief extending the Current Term for an Additional Three (3) years as read and amended by the City Attorney. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Garcia, Samra
NOES:	Council Members:	None

ABSENT: Council Members: None

7. Resolutions Increasing the General Fund Budget to Appropriate \$25,000 of the General Fund Unappropriated Fund Balance for Fiscal Year 2018/2019 to be Used for Receivership Services Provided by the Law Firm of Silver and Wright and to Cover Costs of Abatement.

City Manager Ramirez introduced this item and noted that these funds would be used to clean sites that are considered a health hazard.

Mayor Samra opened Public Comments at 8:15 p.m.

Katherine Schell-Rodriguez, P.O. Box 163, asked for more information about a receivership.

City Attorney Sanchez noted that the court can assign a receiver that cleans a site and use either rent or auction funds to pay for their management or remediation services.

Mayor Samra closed Public Comments at 8:18 pm., as there were no further comments from the public.

Motion: M/S Aguilar/Garcia to adopt Resolution #2019-15 Increasing the General Fund Budget to Appropriate \$25,000 of the General Fund Unappropriated Fund Balance for Fiscal Year 2018/2019 to be Used for Receivership Services Provided by the Law Firm of Silver and Wright and to Cover Costs of Abatement.. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Garcia, Samra
NOES:	Council Members:	None
ABSENT:	Council Members:	None

9. Resolution Approving the Sale of Properties Located Near the Southwest Corner of Olive Avenue and North Main Street.

City Manager Ramirez introduced this item. He noted that this property was originally reserved for a fire station and subsequently properly rezoned for multi-family residential. There is a willing buyer who would like to develop this site.

Mayor Samra opened Public Comments at 8:23 p.m.

Rodrigo Espinoza, Livingston, noted that this property is more valuable to the City if it is developed. It would create more property taxes and bring more homes to our community.

Mayor Samra closed Public Comments at 8:25 p.m., as there were no further comments from the public.

Council Member Aguilar noted that it would be beneficial for these funds to be allocated towards the development of a fire station.

Motion: M/S Baptista/Garcia to adopt Resolution #2019-16 Approving the Sale of Properties Located Near the Southwest Corner of Olive Avenue and North Main Street. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Garcia, Samra
NOES:	Council Members:	None
ABSENT:	Council Members:	None

10. Ordinance Amending Livingston Municipal Code by Revising Title 1 “Administrative,” Chapter 8 “City Council,” Section 1-5-1 to Change the time of Regular Meetings of Livingston City Council to Six O’ Clock (6:00) P.M.

This item was tabled by the City Council.

11. Ordinance Amending Livingston Municipal Code by Revising Title 2 “Boards and Commissions,” Chapter 2 “Planning Commission,” Section 2-2-2, Membership and Terms of Office,” to Change the membership of the Planning Commission to Allow an Additional Alternate Members.

City Manager Ramirez introduced this item. Increasing the number of alternate Planning Commissioners reduces the likelihood of Planning Commission Meetings being canceled.

Mayor Samra opened Public Comments at 8:27 p.m.

Robert Wallis, 1697 Spruce Court, noted that there has not been attendance issues with the current commission.

Mayor Samra closed Public Comments at 8:30 p.m., as there were no further comments from the public.

Motion: M/S Aguilar/Garcia to adopt Ordinance No. 637 Amending Livingston Municipal Code by Revising Title 2 “Boards and Commissions,” Chapter 2 “Planning Commission,” Section 2-2-2, Membership and Terms of Office,” to Change the membership of the Planning Commission to Allow an Additional Alternate Members. The motion carried 5-0-0 by the following roll call vote:

AYES:	Council Members:	Baptista, Aguilar, Kang, Garcia, Samra
NOES:	Council Members:	None
ABSENT:	Council Members:	None

ADJOURNMENT

The meeting was adjourned by consensus at approximately 8:33 p.m.

Deputy City Clerk of the City of Livingston

APPROVED:

Mayor or Mayor ProTempore

The written meeting minutes reflect a summary of specific actions taken by the City Council. They do not necessarily reflect all of the comments or dialogue leading up to the action. All meetings are digitally recorded and are an official record of the meeting's proceedings. Digitally recorded verbatim minutes are available, upon request, and may be obtained at Livingston City Hall.

STAFF REPORT

AGENDA ITEM: Resolution Approving the Sale of Property Located Near the Southwest Corner of Olive Avenue and North Main Street

MEETING DATE: April 2, 2019

PREPARED BY: Jose Antonio Ramirez, City Manager

RECOMMENDATION:

Adopt Resolution No. 2019-____, approving the sale of properties located Near the Southwest Corner of Olive Avenue and North Main Street

BACKGROUND:

The City had reached an agreement to sell the property to Nedal Shriser and Assignee for \$150,000, however there was a cancellation of escrow after a notice to buyer to perform, was not met. A new agreement was reached with a new buyer Castle Assets LLC, Diego Castillo, Manager of the LLC for \$165,000.

DISCUSSION:

The City is proposing to sell a City-owned property. The property is located on the south side of Olive Avenue, west of North Main Street in Livingston, California and is also known as Merced County Assessor's Parcel Number 024-011-016 ("Olive Avenue Property"). The Olive Avenue Property is approximately 2.70 acres and consists of an unimproved and vacant land. Last year the City retained Valbridge Property Associates to appraise the fair market value of the property. The Olive Avenue Property was appraised at \$150,000, as of July 15, 2018.

The City has reached an agreement to sell the Olive Avenue Property to Castle Assets LLC, Diego Castillo, Manager of LLC for \$165,000.

Selling the property will generate additional revenue for the City's Public Works/Streets Funds for purpose of addressing the needs of the "proposed" new fire station. In addition, selling the property will eliminate the administrative costs of maintaining this property.

The attached resolution with authorize the sale of the properties at the prices referenced above, and will authorize the City Manager to negotiate and execute a written purchase and sale agreement for the property in a form approved by the City Attorney.

FISCAL IMPACT:

The sale of the property will generate a \$155,508 for the City's Public Works/Streets Fund.

ATTACHMENTS:

1. Resolution No. 2019-

3165578.1

RESOLUTION NO. 2019-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LIVINGSTON APPROVING THE SALE OF PROPERTY NEAR THE SOUTHWEST
CORNER OF OLIVE AVENUE AND NORTH MAIN STREET**

WHEREAS, the City is the owner of that certain real property located on the south side of Olive Avenue, west of North Main Street in Livingston, California and also known as Merced County Assessor's Parcel Number 024-011-016 ("Property A"); and

WHEREAS, Property A is approximately 2.70 acres and is an unimproved and vacant parcel; and

WHEREAS, the City retained Valbridge Property Associates to appraise the fair market value of both Property A; and

WHEREAS, Valbridge Property Associates appraised Property A as of July 15, 2018; and

WHEREAS, sale of the Property by the City will generate additional revenue for the City's Public Works/Streets Fund for the purpose of addressing the needs of the "proposed" new fire station, and will eliminate the administrative costs of maintaining this Property; and

WHEREAS, the sale of the property conforms with the City's General Plan pursuant to Government Code section 65402; and

WHEREAS, Castle Assets LLC, Diego Castillo, Manager of the LLC has submitted an offer to purchase Property A for \$165,000, which is greater than the appraised value of property as determined by Valbridge Property Associates; and

WHEREAS, the City Council desires to sell Property A.

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

1. The above recitals are true and correct and incorporated herein.
2. The City Council approves the sale of Property A to Castle Assets LLC, Diego Castillo, Manager of the LLC for a price of \$165,000 and authorizes the City Manager to negotiate and execute a purchase and sale agreement for the sale of Property A in a form approved by the City Attorney.
3. The City Manager and City Attorney are authorized and directed to take such action as is necessary to carry out the purpose and intent of this Resolution.

Passed and adopted this 2nd day of April, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Gurpal Samra, Mayor
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Livingston this ___ day of July, 2017.

Danna Rasmussen, Deputy City Clerk
of the City of Livingston

3165522.1

Disbursement Date: April 17, 2019

Escrow Officer: Unariene Mitchell
Email: mitchellc@fnf.com

Buyer: TBD

Seller: City of Livingston
Livingston, CA 95334
Livingston, CA 95334
Parcel ID(s): 024-011-016

		\$	DEBITS	\$	CREDITS
FINANCIAL CONSIDERATION					
Sale Price of Property					165,000.00
COMMISSIONS					
Commission - Listing Agent	Century 21 M & M Associates		8,250.00		
	\$165,000.00 @ 5.0000% = \$8,250.00				
TITLE & ESCROW CHARGES					
Title - Escrow Fee	Fidelity National Title Company		347.50		
Title - Mobile Signing Service	Fidelity National Title Company		175.00		
Title - Owner's Title Insurance	Fidelity National Title Company		403.00		
Policies to be issued:					
Owners Policy					
Coverage: \$165,000.00	Premium: \$806.00	Version: CLTA Standard Coverage Policy			
		1990 (04-08-14)			
GOVERNMENT CHARGES					
Merced County Transfer Tax	Fidelity National Title Company		181.50		
MISCELLANEOUS CHARGES					
Natural Hazards Disclosure	Estimate		135.00		
Subtotals			9,492.00		165,000.00
Balance Due TO Seller			155,508.00		
TOTALS			165,000.00		165,000.00

** less 3 1/3 if it applies **

The fees listed are based solely on the information provided and subject to Lender's Closing Instructions. Any changes, including but not limited to the sales price, loan amount, requested endorsements, number of pages to be recorded, documents to be recorded and number of loan packages will result in a change to the figures provided. Review this quote carefully as the settlement agent will not be held liable for the accuracy or completeness of the information received or for failure to request updated figures if the terms have changed or additional services are required.

This is a pre-estimate ONLY
subject to matters which
may, upon final closing
audit, increase or decrease
your closing costs



CALIFORNIA ASSOCIATION OF REALTORS

REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (FOR BUYER REPRESENTATIVES)

(C.A.R. Form RCSD-B, Revised 6/16)

This form is not an assignment. It should not be used to add new parties after a contract has been formed. The purpose of this form is to identify who the principal is in the transaction and who has authority to sign documents on behalf of the principal.

This is a disclosure to the Purchase Agreement or Buyer Representation Agreement OR Other, dated

for the property known as 0 Olive St, Livingston, Ca 95334, between City of Livingston Jose Ramirez and Castle Assets LLC Diego Castillo, Manager of the LLC

If a trust, identify Buyer as the trustee(s) of the trust or by simplified trust name (e.g. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust 3.) Full name of trust should be identified in 1A below. If power of attorney, insert principal's name as Buyer.

- 1. A. TRUST: (1) Assets used to acquire/lease the Property are held in trust pursuant to a trust document titled... B. ENTITY: Buyer is a Corporation, Limited Liability Company, Partnership Other... C. POWER OF ATTORNEY: Buyer ("Principal") has authorized the person(s) signing below ("Attorney-In-Fact", "Power of Attorney" or "POA") to act on his/her behalf pursuant to a General Power of Attorney...

2. Buyer's Representative represents that the trust, entity or power of attorney for which that Party is acting already exists.

Buyer:

By Diego Castillo Date: 03-18-2019 (Sign Name of Trustee, Officer, Managing Member, Partner, or Attorney-in-Fact) (Print Representative Name) Diego Castillo Title: Manager of the LLC

By Date: (Sign Name of Trustee, Officer, Managing Member, Partner, or Attorney-in-Fact) (Print Representative Name) Title:

Acknowledgement of Receipt By Other Party:

(Buyer Broker) Century 21 M & M and assoc. By Lidia Lee Almeida Date: 03-16-2019

(Seller) Date: (Print Seller Name) City of Livingston

(Seller) Date: (Print Seller Name)

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RCSD-B REVISED 6/16 (PAGE 1 OF 1)

REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (RCSD-B PAGE 1 OF 1)





CALIFORNIA ASSOCIATION OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Buyer's Brokerage Firm to Buyer) (As required by the Civil Code) (C.A.R. Form AD, Revised 12/18)

(If checked) This form is being provided in connection with a transaction with a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k) and (l).

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

SELLER'S AGENT

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

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

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

BUYER'S AGENT

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

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

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

AGENT REPRESENTING BOTH SELLER AND BUYER

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

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer. (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

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

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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

Buyer Seller Landlord Tenant Date 03-18-2019

Buyer Seller Landlord Tenant Date

Agent Century 21 M & M and assoc. DRE Lic. # 01163860

By Lidia Lee Almeida DRE Lic. # 01205325 Date 03-16-2019

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AD REVISED 12/18 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

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

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

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

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

2079.16 Reproduced on Page 1 of this AD form.

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

CONFIRMATION. The following agency relationships are confirmed for this transaction:

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____
Is the broker of (check one): [] the seller; or [] both the buyer and seller. (dual agent)
Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____
Is (check one): [] the Seller's Agent. (salesperson or broker associate) [] both the Buyer's and Seller's Agent. (dual agent)
Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____
Is the broker of (check one): [] the buyer; or [] both the buyer and seller. (dual agent)
Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____
Is (check one): [] the Buyer's Agent. (salesperson or broker associate) [] both the Buyer's and Seller's Agent. (dual agent)

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

2079.18 (Repealed pursuant to AB-1289)
2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

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

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

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

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

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

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AD REVISED 12/18 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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CALIFORNIA ASSOCIATION OF REALTORS

BUYER'S VACANT LAND ADDITIONAL INSPECTION ADVISORY

(C.A.R. Form BVLIA, 11/13)

Property Address: 0 Olive St, Livingston, Ca 95334 ("Property").

A. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. For this reason, you should conduct thorough investigations of the Property personally and with professionals who should provide written reports of their investigations. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations. Additionally, some inspections, such as those listed below, may be of particular importance when purchasing vacant land.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. The purchase agreement gives you the right to investigate the Property. If you exercise this right, and you should, you must do so in accordance with the terms of that agreement. This is the best way for you to protect yourself. It is extremely important for you to read all written reports provided by professionals and to discuss the results of inspections with the professional who conducted the inspection. You have the right to request that Seller make repairs, corrections or take other action based upon items discovered in your investigations or disclosed by Seller. If Seller is unwilling or unable to satisfy your requests, or you do not want to purchase the Property in its disclosed and discovered condition, you have the right to cancel the agreement if you act within specific time periods. If you do not cancel the agreement in a timely and proper manner, you may be in breach of contract.

C. SELLER RIGHTS AND DUTIES: Seller is required to disclose to you material facts known to him/her that affect the value or desirability of the Property. However, Seller may not be aware of some Property defects or conditions. Seller does not have an obligation to inspect the Property for your benefit nor is Seller obligated to repair, correct or otherwise cure known defects that are disclosed to you or previously unknown defects that are discovered by you or your inspectors during escrow. The purchase agreement obligates Seller to make the Property available to you for investigations.

D. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as soil stability, geologic or environmental conditions, hazardous or illegal controlled substances, structural conditions of the foundation or other improvements, or the condition of the roof, plumbing, heating, air conditioning, electrical, sewer, septic, waste disposal, or other system. The only way to accurately determine the condition of the Property is through an inspection by an appropriate professional selected by you. If Broker gives you referrals to such professionals, Broker does not guarantee their performance. You may select any professional of your choosing. If you have entered into a written agreement with a Broker, the specific terms of that agreement will determine the nature and extent of that Broker's duty to you. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

E. YOU ARE ADVISED TO CONDUCT INVESTIGATIONS OF THE ENTIRE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- 1. FINANCE: Financing the purchase of vacant land finance and especially financing construction loans for the improvement of vacant land can provide particular challenges, including subordination agreements and insurance requirements. Buyer is advised to seek the assistance of reputable lenders in assistance with their decisions regarding financing of the property.
2. CONSTRUCTION COSTS: If Buyer is contemplating building improvements on the property, Buyer is advised that they will have to contact directly any contractors, service providers, suppliers, architects, utility companies regarding the costs of improvements. Buyer is advised to get written bids from all such persons regarding their decision to develop the property.
3. UTILITIES: Unimproved property may or may not have utilities available to the property. Buyer(s) is advised to obtain information from the public or private utility provider about the availability and cost of providing utilities to the property and whether necessary easements are in place to allow such utilities to the property.
4. ENVIRONMENTAL SURVEY: Unimproved land may have had or may have hazardous materials stored upon or under the land or been used by persons engaged in activities exposing the land to hazardous materials. The land may also be host to protected vegetation or animal life. Buyer(s) is advised to satisfy themselves as what hazards or protected plant or animal life are on the property and what impact they may have on Buyer's future plans for the property by seeking the help of a qualified professional.

Buyer's Initials (DC) ()

Seller's Initials () ()

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BVLIA 11/13 (PAGE 1 OF 2)

BUYER'S VACANT LAND ADDITIONAL INSPECTION ADVISORY (BVLIA PAGE 1 OF 2)



Property Address: 0 Olive St, Livingston, Ca 95334

Date: 3-16-19

- 5. NATURAL HAZARDS REPORTS:** Buyer(s) is advised that while certain disclosures are required by state, federal and local laws, hazard disclosure companies can provide additional disclosures for both natural and man-made hazards or nuisances for a cost. Buyer is advised to seek the advice of a natural hazards reporting company regarding additional reports and disclosures that buyer may wish to obtain.
- 6. SUBDIVISION OF THE PROPERTY:** If Buyer's plans include future subdivision of the property (whether under the Subdivision Map Act of the Subdivided Lands Law) multiple, complex issues regarding city, county, state, and federal laws may be presented. Buyer is strongly advised to seek the advice of California legal counsel familiar with federal, state and local subdivision requirements.

Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (x) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyer is encouraged to read it carefully.


SELLER City of Livingston Date _____

SELLER _____ Date _____

BUYER Diego Castillo Date 03-18-2019
Castle Assets LLC Diego Castillo

BUYER _____ Date _____

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CALIFORNIA ASSOCIATION OF REALTORS

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (C.A.R. Form WFA, Revised 12/17)

Property Address: 0 Olive St, Livingston, Ca 95334 ("Property")

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

- 1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.

If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: https://www.fbi.gov/; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: http://www.nw3c.org/

On Guard Online: https://www.onguardonline.gov/

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant: Diego Castillo, Castle Assets LLC Diego Castillo, Date: 03-18-2019
Buyer/Tenant: Date:
Seller/Landlord: City of Livingston, Date:
Seller/Landlord: Date:

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WFA REVISED 12/17 (PAGE 1 OF 1)

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/18)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller City of Livingston Date
Seller Date
Buyer Diego Castillo Casile Assets LLC Diego Castillo Date 03-18-2019
Buyer Date

Buyer's Brokerage Firm Century 21 M & M and assoc. DRE Lic # 01183865 Date 03-16-2019
By Lidio Lee Almeida DRE Lic # 01205328 Date 03-16-2019
Lidio "Lee J" Almeida

Seller's Brokerage Firm Century 21 M & M and assoc. DRE Lic # 01183865 Date 03-16-2019
By Lidio Lee Almeida DRE Lic # 01205328 Date 03-16-2019
Lidio "Lee J" Almeida

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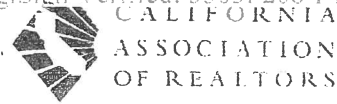


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PRBS REVISED 12/18 (PAGE 1 OF 1)

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)



VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form VLP, Revised 12/18)

Date Prepared: March 16, 2019

1. OFFER:

- A. THIS IS AN OFFER FROM Castle Assets LLC Diego Castillo ("Buyer"),
B. THE REAL PROPERTY to be acquired is 0 Olive St, Livingston (City), Merced (County), California, 95334 (Zip Code), Assessor's Parcel No. 024-011-016 ("Property").
C. THE PURCHASE PRICE offered is One Hundred Sixty-Five Thousand Dollars \$ 165,000.00
D. CLOSE OF ESCROW shall occur on (date) (or X 60 Days After Acceptance).
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a X "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. CONFIRMATION: The following agency relationships are confirmed for this transaction:
Seller's Brokerage Firm Century 21 M & M and assoc. License Number 01183805
Is the broker of (check one): the seller; or X both the buyer and seller. (dual agent)
Seller's Agent Lidio "Leo J" Almeida License Number 01205328
Is (check one): the Seller's Agent. (salesperson or broker associate) X both the Buyer's and Seller's Agent. (dual agent)
Buyer's Brokerage Firm Century 21 M & M and assoc. License Number 01183805
Is the broker of (check one): the buyer; or X both the buyer and seller. (dual agent)
Buyer's Agent Lidio "Leo J" Almeida License Number 01205328
Is (check one): the Buyer's Agent. (salesperson or broker associate) X both the Buyer's and Seller's Agent. (dual agent)

C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a X "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 5,000.00
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, cashier's check, personal check, other within 3 business days after Acceptance (or Fidelity National Title of Merced);
OR (2) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or) to the agent submitting the offer (or to). made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or). Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or). If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

C. ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.

D. LOAN(S):

- (1) FIRST LOAN: in the amount of \$ This loan will be conventional financing OR FHA, VA, Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or, an adjustable rate loan with initial rate not to exceed % of the loan amount.
(2) SECOND LOAN in the amount of \$ This loan will be conventional financing OR Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing Other. This loan shall be at a fixed rate not to exceed % or, an adjustable rate loan with initial rate not to exceed % of the loan amount.
(3) FHAVA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHAVA amendment clause (C.A.R. Form FVAC) shall be a part of this transaction.

Buyer's Initials (DC) ()

Seller's Initials () ()



E. ADDITIONAL FINANCING TERMS:

F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 160,000.00
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

G. PURCHASE PRICE (TOTAL): \$ 165,000.00

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or _____) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (Verification attached.)

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or _____) Days After Acceptance.

J. LOAN TERMS:

(1) LOAN APPLICATIONS: Within 3 (or _____) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (Letter attached.)

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) LOAN CONTINGENCY REMOVAL: Within 21 (or _____) Days After Acceptance, Buyer shall, as specified in paragraph 19, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

L. SELLER FINANCING: The following terms (or the terms specified in the attached Seller Financing Addendum) (C.A.R. Form SFA) apply ONLY to financing extended by Seller under this Agreement.

(1) BUYER'S CREDIT-WORTHINESS: Buyer authorizes Seller and/or Brokers to obtain, at Buyer's expense, a copy of Buyer's credit report. Within 7 (or _____) Days After Acceptance, Buyer shall provide any supporting documentation reasonably requested by Seller.

(2) TERMS: Buyer's promissory note, deed of trust and other documents as appropriate shall incorporate and implement the following additional terms: (i) the maximum interest rate specified in paragraph 3D shall be the actual fixed interest rate for Seller financing; (ii) deed of trust shall contain a REQUEST FOR NOTICE OF DEFAULT on senior loans; (iii) Buyer shall sign and pay for a REQUEST FOR NOTICE OF DELINQUENCY prior to Close Of Escrow and at any future time if requested by Seller; (iv) note and deed of trust shall contain an acceleration clause making the loan due, when permitted by law and at Seller's option, upon the sale or transfer of the Property or any interest in it; (v) note shall contain a late charge of 6% of the installment due (or _____) if the installment is not received within 10 days of the date due; (vi) title insurance coverage in the form of a joint protection policy shall be provided insuring Seller's deed of trust interest in the Property (any increased cost over owner's policy shall be paid by Buyer); and (vii) tax service shall be obtained and paid for by Buyer to notify Seller if property taxes have not been paid.

(3) ADDED, DELETED OR SUBSTITUTED BUYERS: The addition, deletion or substitution of any person or entity under this Agreement or to title prior to Close Of Escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.

M. ASSUMED OR "SUBJECT TO" FINANCING: Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 19, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 19B(3), remove this contingency or

Buyer's Initials (DC) (_____)

Seller's Initials (_____) (_____)



Property Address: 0 Olive St, Livingston, Ca 95334

Date: March 16, 2019

cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment. Impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

4. SALE OF BUYER'S PROPERTY:

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. MANUFACTURED HOME PURCHASE: The purchase of the Property is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow. Buyer has not entered into a contract for the purchase of a personal property manufactured home. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement, (or this contingency shall remain in effect until the Close Of Escrow of the Property).

6. CONSTRUCTION LOAN FINANCING: The purchase of the Property is contingent upon Buyer obtaining a construction loan. A draw from the construction loan will not be used to finance the Property. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement (or this contingency shall remain in effect until Close Of Escrow of the Property).

7. ADDENDA AND ADVISORIES:

- A. ADDENDA: Addendum # (C.A.R. Form ADM), Back Up Offer Addendum (C.A.R. Form BUO), Court Confirmation Addendum (C.A.R. Form CCA), Septic, Well and Property Monument Addendum (C.A.R. Form SWPI), Short Sale Addendum (C.A.R. Form SSA), Other

- B. BUYER AND SELLER ADVISORIES: Buyer's Inspection Advisory (C.A.R. Form BIA), Probate Advisory (C.A.R. Form PA), Statewide Buyer and Seller Advisory (C.A.R. Form SBSA), Trust Advisory (C.A.R. Form TA), REO Advisory (C.A.R. Form REO), Short Sale Information and Advisory (C.A.R. Form SSIA), Other

8. OTHER TERMS:

9. ALLOCATION OF COSTS

A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

- (1) Buyer Seller shall pay for a natural hazard zone disclosure report, including tax environmental Other: prepared by Property ID
(2) Buyer Seller shall pay for the following Report prepared by
(3) Buyer Seller shall pay for the following Report prepared by

B. ESCROW AND TITLE:

- (1) (a) Buyer Seller shall pay escrow fee 1/2 Buyers 1/2 Sellers
(b) Escrow Holder shall be Fidelity National Title of Merced
(c) The Parties shall, within 5 (or) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) Buyer Seller shall pay for owner's title insurance policy specified in paragraph 18E
(b) Owner's title policy to be issued by 1/2 Buyers 1/2 Sellers
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

C. OTHER COSTS:

- (1) Buyer Seller shall pay County transfer tax or fee If Any
(2) Buyer Seller shall pay City transfer tax or fee If Any
(3) Buyer Seller shall pay Homeowners' Association ("HOA") transfer fee
(4) Seller shall pay HOA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) Buyer to pay for any HOA certification fee.
(6) Buyer Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
(7) Buyer Seller shall pay for any private transfer fee
(8) Buyer Seller shall pay for
(9) Buyer Seller shall pay for

10. CLOSING AND POSSESSION: Possession shall be delivered to Buyer: (i) at 6 PM or (AM/ PM) on the date of Close Of Escrow; (ii) no later than calendar days after Close Of Escrow; or (iii) at AM/ PM on The Property shall be unoccupied, unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all Property locks. If Property is located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

Buyer's Initials () ()

Seller's Initials () ()



11. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

- A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 11B or C.
- B. **ITEMS INCLUDED IN SALE:**
 - (1) All EXISTING fixtures and fittings that are attached to the Property;
 - (2) The following items: _____
 - (3) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.
 - (4) All items included shall be transferred free of liens and without Seller warranty.
- C. **ITEMS EXCLUDED FROM SALE:** _____

12. STATUTORY AND OTHER DISCLOSURES AND CANCELLATION RIGHTS:

- A. **NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 19A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- B. **WITHHOLDING TAXES:** Within the time specified in paragraph 19A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- C. **MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- D. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
- E. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
 - (1) **SELLER HAS: 7 (or ___) Days** After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form VLQ).
 - (2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or ___) Days** After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 19B(3). The Party specified in paragraph 9, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

13. SELLER DOCUMENTATION AND ADDITIONAL DISCLOSURE:

- A. Within the time specified in paragraph 19, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:
 - (1) **LEGAL PROCEEDINGS:** Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.
 - (2) **AGRICULTURAL USE:** Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§51200-51295).
 - (3) **DEED RESTRICTIONS:** Any deed restrictions or obligations.
 - (4) **FARM USE:** Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code §3482.5 and §3482.6).
 - (5) **ENDANGERED SPECIES:** Presence of endangered, threatened, 'candidate' species or wetlands on the Property.
 - (6) **ENVIRONMENTAL HAZARDS:** Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.
 - (7) **COMMON WALLS:** Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.
 - (8) **LANDLOCKED:** The absence of legal or physical access to the Property.
 - (9) **EASEMENTS/ENCROACHMENTS:** Any encroachments, easements or similar matters that may affect the Property.
 - (10) **SOIL FILL:** Any fill (compacted or otherwise), or abandoned mining operations on the Property.
 - (11) **SOIL PROBLEMS:** Any slippage, sliding, flooding, drainage, grading, or other soil problems.
 - (12) **EARTHQUAKE DAMAGE:** Major damage to the Property or any of the structures from fire, earthquake, floods, or landslides.
 - (13) **ZONING ISSUES:** Any zoning violations, non-conforming uses, or violations of "setback" requirements.
 - (14) **NEIGHBORHOOD PROBLEMS:** Any neighborhood noise problems, or other nuisances.
- B. **RENTAL AND SERVICE AGREEMENTS:** Within the time specified in paragraph 19, Seller shall make available to Buyer for inspection and review, all current leases, rental agreements, service contracts and other related agreements, licenses, and permits pertaining to the operation or use of the Property.
- C. **TENANT ESTOPPEL CERTIFICATES:** Within the time specified in paragraph 19, Seller shall deliver to Buyer tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

Buyer's Initials (DC) (_____)
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Seller's Initials (_____) (_____)



- D. **MELLO-ROOS TAX; 1915 BOND ACT:** Within the time specified in paragraph 19, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly deliver to Buyer any such notice obtained.
- E. **SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in paragraph 19, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VLQ).
- 14. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.**
- 15. **CHANGES DURING ESCROW:**
 - A. Prior to Close Of Escrow, Seller may engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 15B: (i) rent or lease any part of the premises; (ii) alter, modify or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
 - B. At least 7 (or ___) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of such Proposed Changes. Within 5 (or ___) Days After receipt of such notice, Buyer, in writing may give Seller notice of Buyer's objection to the Proposed Changes, in which case Seller shall not make the Proposed Changes.
- 16. **CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights: (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
 - A. Seller shall, within the time specified in paragraph 19A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
 - B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 19B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
 - C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**
- 17. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
 - A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 19B. Within the time specified in paragraph 19B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
 - B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 19B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
 - C. **Buyer indemnity and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's Investigations. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination or cancellation of this Agreement and Close Of Escrow.
 - D. **BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN THIS PARAGRAPH 17, UNLESS OTHERWISE AGREED IN WRITING.**
 - E. **SIZE, LINES, ACCESS AND BOUNDARIES:** Lot size, property lines, legal or physical access and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements or similar matters that may affect the Property. (Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
 - F. **ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)
 - G. **UTILITIES AND SERVICES:** Availability, costs, restrictions and location of utilities and services, including but not limited to, sewerage, sanitation, septic and leach lines, water, electricity, gas, telephone, cable TV and drainage.

Buyer's Initials (DC) (_____)

Seller's Initials (_____) (_____)

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 5 OF 11)



- H. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic or otherwise), fungus or similar contaminant, materials, products or conditions.
 - I. **GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including any slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
 - J. **NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Fire Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
 - K. **PROPERTY DAMAGE:** Major damage to the Property or any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides or other causes.
 - L. **NEIGHBORHOOD, AREA AND PROPERTY CONDITIONS:** Neighborhood or area conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§51200-51295), Right To Farm Laws (Civil Code §3482.5 and §3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.
 - M. **COMMON INTEREST SUBDIVISIONS; OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC&Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
 - N. **SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act or Improvement Bond Act of 1915.
 - O. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants and the right of a landlord to terminate a tenancy.
 - P. **MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.
- 18. TITLE AND VESTING:**
- A. Within the time specified in paragraph 19, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 19B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within **7 Days After Acceptance**, give Escrow Holder a completed Statement of Information.
 - B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
 - C. Within the time specified in paragraph 19A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
 - D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
 - E. Buyer shall receive a "CLTA/ALTA Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
- 19. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. **SELLER HAS: 7 (or ___) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 3M, 7A, 8, 9, 12A, B, and E, 13, 16A and 18A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.
 - B. (1) **BUYER HAS: 17 (or 45) Days** After Acceptance, unless otherwise agreed in writing, to:
 - (i) complete all Buyer Investigations, review all disclosures, reports, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory Disclosures and other disclosures Delivered by Seller in accordance with paragraph 12A.
 - (2) Within the time specified in paragraph 19B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
 - (3) By the end of the time specified in paragraph 19B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 19A, then Buyer has **5 (or ___) Days** After Delivery of any such items, or the time specified in paragraph 19B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

Buyer's Initials (DC) (_____)

Seller's Initials (_____) (_____)



(4) Continuation of Contingency: Even after the end of the time specified in paragraph 19B(1) and before Seller cancels, if at all, pursuant to paragraph 19C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 19C(1).

C. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; (v) Return Statutory Disclosures as required by paragraph 12A; or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 27B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or ___) Days After Delivery (or until the time specified in the applicable paragraph whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 19.

E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or ___) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.

G. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

20. REPAIRS: Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

21. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final verification of the Property within 5 (or ___) Days Prior to Close Of Escrow. NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 16; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

22. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

Buyer's Initials (DC) (_____)

Seller's Initials (_____) (_____)



- 23. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 24. **BROKERS:**
 - A. **COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
 - B. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- 25. **REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 37 or 38 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
- 26. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
 - A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5, 6, 7A, 8, 9, 12B, 18, 19G, 23, 24A, 25, 26, 32, 35, 36, 37, 38 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 24A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 9B(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or ___) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 9, 12 or elsewhere in this Agreement.
 - B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 12B, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.
 - C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 24A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 24A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
 - D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

Buyer's Initials (DC) (_____)

Seller's Initials (_____) (_____)

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

27. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).

Buyer's Initials DC / Seller's Initials _____ / _____

28. DISPUTE RESOLUTION:

A. MEDIATION: The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 28C.

B. ARBITRATION OF DISPUTES:

The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 28C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials DC / Seller's Initials _____ / _____

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

29. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer. Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

Buyer's Initials (DC) (_____) Seller's Initials (_____) (_____)

- 30. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
- 31. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.
- 32. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOOA).
- 33. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 34. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counteroffer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 35. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 36. **DEFINITIONS:** As used in this Agreement:
 - A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
 - B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
 - C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
 - D. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
 - E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
 - F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
 - G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
 - H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
 - I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other).
 - J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- 37. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____ who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____ AM/ _____ PM, on _____ (date)).

One or more Buyers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 03-18-2019 BUYER *Diego Castillo*
 (Print name) Castle Assets LLC Diego Castillo
 Date _____ BUYER _____
 (Print name) _____

Additional Signature Addendum attached (C.A.R. Form ASA)

Property Address: 0 Olive St, Livingston, Ca 95334

Date: March 16, 2019

38. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:

One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date SELLER (Print name) City of Livingston

Date SELLER (Print name)

Additional Signature Addendum attached (C.A.R. Form ASA).

(Initials) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at AM/ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
B. Agency relationships are confirmed as stated in paragraph 2.
C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.
D. COOPERATING (BUYER'S) BROKER COMPENSATION: Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS.
E. PRESENTATION OF OFFER: Pursuant to Standard of Practice 1-7, if Buyer's Broker makes a written request, Seller's Broker shall confirm in writing that this offer has been presented to Seller.

Buyer's Brokerage Firm Century 21 M & M and assoc. By Lidia Lee Almeida DRE Lic. # 01205328 Date 03-16-2019

Seller's Brokerage Firm Century 21 M & M and assoc. By Lidia Lee Almeida DRE Lic. # 01205328 Date 03-16-2019

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ counter offer numbers Seller's Statement of Information and and agrees to act as Escrow Holder subject to paragraph 26 of this Agreement. any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is Escrow Holder By Escrow # Address Date Phone/Fax/E-mail

Escrow Holder has the following license number # Department of Business Oversight, Department of Insurance, Department of Real Estate.

PRESENTATION OF OFFER: () Seller's Broker presented this offer to Seller on (date). Broker or Designee Initials

REJECTION OF OFFER: () () No counter offer is being made. This offer was rejected by Seller on (date). Seller's Initials

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Buyer's Acknowledgment that page 11 is part of this Agreement (DC)



STAFF REPORT

AGENDA ITEM: Resolution Adopting a Motion Increasing the General Fund Budget to Appropriate \$25,000 of the General Fund Unappropriated Fund Balance for Fiscal Year 2018/2019.

MEETING DATE: April 2, 2019

PREPARED BY: Jose Antonio Ramirez – City Manager

REVIEWD BY: Jose Antonio Ramirez – City Manager

RECOMMENDATION:

City Council adopt a motion, adopting Resolution No. 2019- , Resolution of the City Council of the City of Livingston increasing the General Fund budget to appropriate \$25,000 of the General Fund Unappropriated Fund Balance for Fiscal Year 2018/2019 to be used for receivership services provided by the law firm of Silver & Wright and to cover costs of abatement.

BACKGROUND:

The City Manager has the authority to make transfers of budget appropriations between classifications and activities within a fund. Any additional appropriation authority requires City Council approval.

A priority of the City Council is code enforcement which results in nuisance abatement and reduction of blight. A tool that is used in this regard is a Health & Safety Receivership.

DISCUSSION:

A Health & Safety Receivership is a legal process through which title to a piece of real property is temporarily taken from the owner and placed with a court appointed officer – the Receiver. Receiverships are used primarily for abandoned and substandard properties where the owner has a history of non-compliance with local enforcement orders to abate, or where emergency circumstances are discovered which pose immediate threats to health and safety. Receiverships are a dramatic mechanism which visibly communicates to neighbors and surrounding communities that the agency is taking positive steps to clean-up residential neighborhoods and to protect tenants who have been subjected to dangerous conditions by absentee or recalcitrant owners.

Attorney fees, court costs, repair costs, tenant relocation and other costs to take full and complete control of property can be recovered through a lien on the property and/or through any rents and income generated from the property.

Silver & Wright LLP are attorneys that specialize in providing receivership services to public agencies. Approving a supplemental budget appropriation will provide additional funds to deal with dangerous properties, abandoned buildings and other code enforcement issues that owners choose not to address. At the March 5, 2019 City Council approved a contract with Silver & Wright and a supplemental appropriation for \$25,000 was made from the General Fund to pay for their services.

Currently two properties are in need of Silver & Wright's services. Costs for receivership services for each property are estimated to be \$25,000 each. An additional \$25,000 is needed in order to deal with both properties.

FISCAL IMPACT:

General Fund expense budget would be increased by \$25,000 and recoveries, if and when received, would be deposited in the General Fund.

ATTACHMENT:

Supplemental Budget Resolution No. 2019-_____

RESOLUTION NO. 2019 - _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
INCREASING THE GENERAL FUND BUDGET TO APPROPRIATE \$25,000 OF THE
GENERAL FUND UNAPPROPRIATED FUND BALANCE FOR FISCAL YEAR 2018/19**

WHEREAS, a priority of the City Council is code enforcement; and

WHEREAS, the City is committed to reducing blight and abating nuisances; and

WHEREAS, the City is committed to using whatever tools are available to achieve success.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
LIVINGSTON AS FOLLOWS:**

1. The sums of money therein set forth are hereby appropriated from the unappropriated General Fund balance to be used for Code Enforcement.

Passed and adopted this 2nd day of April 2019, by the following vote:

YES:

NOES:

ABSTAIN:

ABSENT:

Gurpal Samra, Mayor
Of the City of Livingston

ATTEST:

I, hereby certify, that the foregoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Livingston this 2nd day of April 2019.

Danna Rasmussen, Deputy City Clerk
Of the City of Livingston

STAFF REPORT

AGENDA ITEM: Resolution Awarding a Contract to Gouveia Engineering, Inc. and Authorizing the City Manager to Execute the Agreement for On-Call Engineering Services for Federally Funded Transportation Projects for the City of Livingston

MEETING DATE: April 2, 2019

PREPARED BY: Jose Antonio Ramirez, City Manager

RECOMMENDATION:

Adopt Resolution No. 2019-___, awarding a contract to Gouveia Engineering, Inc. and authorizing the City Manager to execute the agreement for On-call Engineering Services for Federally Funded Transportation Projects for the City of Livingston.

BACKGROUND:

The City of Livingston is responsible for constructing transportation projects that receive Federal funding from the Federal Highways Administration (FHWA) and are administered through the California Department of Transportation (Caltrans). These funds are provided subject to Federal regulations and in order to comply, certain services including Engineering are contracted out to qualified firms due to the City's limited staff and expertise.

FHWA allows for these type of Engineering services to be offered on an on-call basis for a maximum term of five (5) years. However, local agencies must go through an extensive Caltrans' review process to select a firm and award an on-call contract for Architectural and Engineering (A&E) services. The City must conduct a procurement process for A&E services in strict accordance with the Federal regulations. Firms must be both qualified and certified to participate on FHWA contracts.

The City is in need of a qualified Consultant to continue these FHWA services for ongoing and future transportation projects that are funded strictly with Federal grants.

DISCUSSION:

Following the required A&E procurement process, City staff prepared and issued a request for qualifications for consultants to provide on-call FHWA Engineering Services for an initial term of three (3) years with an option for two additional 1-year terms (5 years total). Four (4) statement of qualifications were received from the following firms:

1. Gouveia Engineering, Inc.
2. TRC Engineering, Inc.
3. Ruggeri Jensen Azar Engineering
4. A&M Consulting Engineers

City staff reviewed the proposals and selected Gouveia Engineering as the most qualified firm to provide these on-call services for the City of Livingston. Subsequently, City staff consulted with Caltrans for approval of Gouveia's contract.

Having followed the A&E procurement process and having received the required Caltrans approvals, City staff recommends the City Council to award an on-call contract to Gouveia Engineering as shown on the attached consultant contract.

FISCAL IMPACT:

The on-call contract fees would be funded from Federal grants awarded for City projects.

ATTACHMENTS:

1. Resolution No. 2019-____
2. Consultant Services Contract effective April 2, 2019
3. Gouveia Engineering Proposal Fees dated March 26, 2019

RESOLUTION NO. 2019-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
AWARDING A CONTRACT TO GOUVEIA ENGINEERING, INC. AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR ON-
CALL ENGINEERING SERVICES FOR FEDERALLY FUNDED TRANSPORTATION
PROJECTS FOR THE CITY OF LIVINGSTON**

WHEREAS, the City of Livingston is responsible for constructing transportation projects that receive Federal funding; and

WHEREAS, these Federal funds are provided by the Federal Highways Administration (FHWA) and are administered by the California Department of Transportation (Caltrans); and

WHEREAS, the Federal funds are subject to Federal regulations and in order to comply, certain services including Engineering are contracted out to qualified firms due to the City's limited staff and expertise; and

WHEREAS, FHWA allows for these type of Engineering services to be offered on an on-call basis for a maximum term of five (5) years; and

WHEREAS, local agencies must go through an extensive Caltrans' review process for selecting a firm and awarding an on-call contract for Architectural and Engineering (A&E) services; and

WHEREAS, the City must conduct a procurement process for A&E services in strict accordance with the Federal regulations; and

WHEREAS, firms must be qualified and certified to participate on FHWA contracts; and

WHEREAS, the City is in need of a qualified Consultant to continue these FHWA services for ongoing and future transportation projects funded strictly with Federal grants; and

WHEREAS, the City prepared and issued a request for qualifications for consultants to provide on-call FHWA Engineering Services for an initial term of three (3) years with optional two 1-year terms (5 years total); and

WHEREAS, the City received four (4) statement of qualifications from the following firms:

1. Gouveia Engineering, Inc.
2. TRC Engineering, Inc.
3. Ruggeri Jensen Azar Engineering
4. A&M Consulting Engineers; and

WHEREAS, City staff reviewed the proposals and selected Gouveia Engineering as the most qualified firm to provide these on-call services for the City of Livingston and subsequently consulted with Caltrans for approval of this consultant contract; and

WHEREAS, City staff has followed the A&E procurement process and has received the required Caltrans approvals for awarding a contract to Gouveia Engineering; and

WHEREAS, the City Council desires to enter into a contract with Gouveia Engineering and delegates the City Manager to execute the contract effective April 2, 2019.

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

Section 1. The above recitals are true and correct findings of the Livingston City Council.

Section 2. Approves a contract with Gouveia Engineering Inc. to provide on-call engineering services for federally funded transportation projects for the City of Livingston per the consultant contract effective April 2, 2019, and for a maximum term of 5 years.

Section 3. Authorizes the City Manager to execute the contract effective April 2, 2019, with Gouveia Engineering, Inc.

Passed and adopted this 2nd day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Gurpal Samra, Mayor
of the City of Livingston

ATTEST:

I, hereby certify that the foregoing resolution was regularly introduced, passed and adopted at a Regular Meeting of the City Council of the City of Livingston this 2nd day of April, 2019.

Danna Rasmussen, Deputy City Clerk
of the City of Livingston

**CONSULTANT SERVICES CONTRACT
for the City of Livingston
for On-Call Engineering Services for Federally Funded Transportation Projects**

ARTICLE I INTRODUCTION

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:
GOUVEIA ENGINEERING, INC.

Incorporated in the State of CALIFORNIA
The Project Manager for the "CONSULTANT" will be MARIO B. GOUVEIA.
The name of the "LOCAL AGENCY" is as follows:
CITY OF LIVINGSTON

The Contract Administrator for LOCAL AGENCY will be CITY MANAGER.

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated March 26, 2019. The approved CONSULTANT's Cost Proposal is attached hereto (ATTACHMENT 1) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation

hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.

- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the Local AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III STATEMENT OF WORK

- A. CONSULTANT Services
Consultant services shall be those as required and listed on the City of Livingston Request for Qualifications (ATTACHMENT 2) and Gouveia Engineering Statement of Qualifications for

On-Call Engineering Services for Federally Funded Transportation Projects (ATTACHMENT 3), all attached hereto and incorporated by reference.

B. Right of Way

CONSULTANT shall provide right of way services pursuant to Article III, Paragraph A.

C. Surveys

CONSULTANT shall provide surveying services pursuant to Article III, Paragraph A.

D. Subsurface Investigations

Not applicable.

E. Local Agency Obligations

LOCAL AGENCY shall provide CONSULTANT all available data applicable to the AGREEMENT and that it is necessary to complete the Consultant services.

F. Conferences, Site Visits, Inspection of Work

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

CONSULTANT shall provide services for checking shop drawings pursuant to Article III, Paragraph A.

H. CONSULTANT Services During Construction

CONSULTANT shall provide construction services pursuant to Article III, Paragraph A.

I. Documentation and Schedules

AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

J. Deliverables and Number of Copies

CONSULTANT shall provide deliverables pursuant to Article III, Paragraph. Deliverables shall be provided in electronic format and hard copies.

ARTICLE IV PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on April 2, 2019 contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on April 2, 2022, unless extended by AGREEMENT amendment. The AGREEMENT may be extended for two (2) additional one-year terms upon mutual agreement between CONSULTANT and LOCAL AGENCY. The AGREEMENT shall not exceed a total of five (5) years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal (ATTACHMENT 1). The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the first three (3) years of this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of Livingston
City Manager, Contract Administrator
1416 C Street
Livingston, CA 95334

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ 995,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of LOCAL AGENCY.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section **Error! Reference source not found.** Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of LOCAL AGENCY.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion,

may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY

no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is

sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.

- b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representative's at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.

F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the sub-agreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual,

apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.

- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
 - 1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand

dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title

VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

- A. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is 12%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-01: Consultant Proposal DBE Commitment](#), or in [Exhibit 10-02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE

subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The LOCAL AGENCY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the LOCAL AGENCY deems appropriate, which may include, but is not limited to:
- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the LOCAL AGENCY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) First-Tier Subconsultants, certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.

2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.

- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and FINANCE DIRECTOR, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY

representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL

AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT’s performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI RETENTION OF FUNDS

A. No retainage will be withheld by LOCAL AGENCY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

GOUVEIA ENGINEERING, INC.
MARIO B. GOUVEIA , Project Manager
456 SIXTH STREET
GUSTINE, CA 95322

LOCAL AGENCY:

CITY OF LIVINGSTON
CITY MANAGER , Contract Administrator
1416 C STREET
LIVINGSTON, CA 95334

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

CITY OF LIVINGSTON:

GOUVEIA ENGINEERING, INC.:

JOSE ANTONIO RAMIREZ, CITY MANAGER

MARIO B. GOUVEIA, PRESIDENT

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(NON-PREVAILING WAGE CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant Gouveia Engineering Inc.

Prime Consultant

Subconsultant

2nd Tier Subconsultant

Project No. _____ Contract No. _____ Participation Amount \$ 995,000.00 Date 03/26/2019

For Combined Rate	Fringe Benefit 38.41% + General and Administrative 66.31%	=	104.72% Combined
OR			
For Home Office Rate	Fringe Benefit % + General and Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit % + General and Administrative %	=	Field Office ICR%

Fee = **13%**

BILLING INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²		Effective Date of Hourly Rate From	To	Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only
	Straight ³	OT(1.5x) OT(2x)					
Mario Gouveia – President/Principal Engineer*	\$177.94	\$266.91	01/01/2019	12/31/2019	\$76.92	0.0%	
Noe Martinez – Principal Engineer	\$144.58	\$216.99	01/01/2019	12/31/2019	\$62.50	0.0%	Not Applicable
Carlos Fernandez – Senior Engineer	\$111.23	\$166.84	01/01/2019	12/31/2019	\$48.08	0.0%	
Danny Reed – Project Manager	\$105.48	\$158.48	01/01/2019	12/31/2019	\$45.67	0.0%	
Linda Gouveia – Vice-President/ Engineering Asst II	\$155.82	\$233.68	01/01/2019	12/31/2019	\$67.31	0.0%	Not Applicable
Mark Arrieta – Engineering Asst II	\$78.56	\$117.98	01/01/2019	12/31/2019	\$34.00	0.0%	
Tina Whittsit – Engineering Asst I	\$46.27	\$69.40	01/01/2019	12/31/2019	\$20.00	0.0%	Not Applicable
Danielle Fontaine – Engineering Asst I	\$46.27	\$69.40	01/01/2019	12/31/2019	\$20.00	0.00%	Not Applicable
Morien Prakash, CAD Designer	\$60.15	\$90.22	01/01/2019	12/31/2019	\$26.00	0.00%	Not Applicable

CALCULATION INFORMATION

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ICR) * (1+ Fee). Indirect cost rates should be based on the consultant's annual accounting period, established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant Gouveia Engineering Inc. Prime Consultant Subconsultant

Project No. _____ Contract No. _____ Date 03/26/2019

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs	N/A	N/A	N/A	IRS Std Mileage Rate
Subconsultant 1: Ground Zone Environmental Services				\$ 90,000
Subconsultant 2: CVEAS				\$ 50,000
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

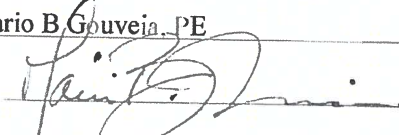
Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Mario B. Gouveia, PE Title *: President/Principal Engineer
 Signature:  Date of Certification (mm/dd/yyyy): 03/26/2019
 Email: mgouveia@gouveiaengineering.com Phone Number: (209) 854-3300
 Address: 456 Sixth Street, Gustine, CA 95322

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

On-call Engineering Services for Federally Funded Transportation Projects.