



CITY COUNCIL REGULAR MEETING AGENDA DECEMBER 21, 2021 7:00 P.M.

NOTICE: IN ORDER TO MINIMIZE THE SPREAD OF THE COVID-19 VIRUS, THIS MEETING WILL BE CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDER N-08-21, WHICH SUSPENDED CERTAIN REQUIREMENTS OF THE BROWN ACT.

WE ENCOURAGE ALL MEMBERS OF THE PUBLIC TO PARTICIPATE IN THE MEETING VIA TELECONFERENCE BY CALLING (520) 525-8911. ANY MEMBER OF THE PUBLIC PARTICIPATING VIA TELECONFERENCE WILL BE GIVEN THE OPPORTUNITY TO PROVIDE PUBLIC COMMENT.

ADDITIONALLY, THE MEETING WILL BE STREAMED ON YOUTUBE LIVE
https://www.youtube.com/channel/UCB_ZmQZIHh-ECEPZ2VwZg

PURSUANT TO STATE ORDER, ALL MEMBERS OF THE PUBLIC ARE REQUIRED TO WEAR A FACE COVERING WHILE INSIDE CITY FACILITIES.

(Some Councilmembers may be participating in the meeting remotely via teleconferencing consistent with the Governor's Executive Order N-08-21.)

Notice is hereby given that the City Council will hold a Regular Meeting on December 21, 2021, at the City Council Chambers, 663 Main Street, Livingston, California or conducted pursuant to the provisions of the Governor's Executive Order N-08-21. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation 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 by email if requested. Public comments can be submitted via email at citycouncil@livingstoncity.com. Comments must be received by 2:00 p.m. on the day of the City Council meeting. You will need to provide: Meeting date, item number, name, email and comment (please limit to 300 words or 3 minutes). Please include: **PUBLIC COMMENT** in the subject for the email.

REGULAR MEETING

CALL TO ORDER

Next Resolution No.: 2021-84

Next Ordinance No.: 645

Pledge of Allegiance.

Moment of Silence – First Responders and Military Members.

Roll Call.

Closed Session Announcements.

Changes to the Agenda.

CITIZEN COMMENTS

MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE CITY COUNCIL WILL BE GIVEN THE SAME TIME ALLOTMENT FOR COMMENTS (3 MINUTES) AS NORMALLY ALLOWED FOR MEETINGS SUBJECT TO THE PROVISIONS OF EXECUTIVE ORDER N-08-21

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.

ANNOUNCEMENTS AND REPORTS

City Staff Announcements and Reports.

City Manager Announcements and Reports.

City Council Members' Announcements and Reports.

Mayor's Announcements and Reports.

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.

1. WAIVING OF READING OF ORDINANCE AND RESOLUTIONS

City Council Waive the Reading in Full of Ordinances and Resolutions on Agenda and Adopt by Reading the Title only, Unless Otherwise Requested by the Mayor or a Council Member.

2. **RATIFY CHECK WARRANTS**
Ratify Warrant Register Dated December 16, 2021.
3. **APPROVE CONTRACT WITH CPS HR**
Resolution Approving Contract with CPS HR Consulting to Conduct Executive Recruitment Services.
4. **RATIFY MEMORANDUM OF UNDERSTANDING**
Resolution Ratifying Amendments to the Memorandum of Understanding (MOU) between the City of Livingston and the Public Works and Parks Employees Unit.
5. **APPROVE DECLARATION OF CERTAIN PROPERTY AS SURPLUS**
Resolution Approving the Declaration of City Property as Surplus and Authorizing its Disposal.

DISCUSSION AND POTENTIAL ACTION ITEMS

6. **RATIFY CONTRACT FOR INTERIM CHIEF OF POLICE SERVICES**
Resolution Ratifying the Contract between Merced County and the City of Livingston for Interim Chief of Police Services.
7. **APPROVE AGREEMENT FOR PERMANENT CITY MANAGER SERVICES**
Resolution Approving Entering into an Agreement with Vanessa Portillo for Permanent City Manager Services.
8. Discussion and Direction on a Skate Park.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS

ADJOURNMENT



STAFF REPORT

AGENDA ITEM: Warrant Register dated December 16, 2021
MEETING DATE: December 21, 2021
PREPARED BY: Nancy Fuentes, Accounting Technician
REVIEWED BY: Vanessa Portillo, Interim City Manager

RECOMMENDATION:

Ratify the warrant register dated December 16, 2021

DISCUSSION:

Government Code sections 37208(b) and 37209 provide that accounts payable warrants or checks drawn in payment of demands certified or approved by the finance director as conforming to a budget approved by ordinance or resolution of the legislative body need not be audited by the legislative body prior to payment.

In addition, Government Code section 37208(a) provides that payroll warrants or checks need not be audited by the legislative body prior to payment. Payrolls shall be presented to the legislative body for ratification and approval at the first meeting after delivery of the payroll warrants or checks. The sum total of any payroll checks issued within the week prior to the date of the check register is also noted on the accompanying check register.

The following checks have been certified to be in accordance with the City's approved budget. The checks have been issued and the check register is presented to the City Council for ratification:

December 2, 2021- December 16, 2021

GENERAL WARRANTS.....	\$	502,651.90	5859-5936
PAYROLL/WIRE WARRANTS.....	\$	395,633.63	1869-1908
TOTAL WARRANTS.....	\$	898,285.53	

ATTACHMENTS:

Warrant Register (summarized by date and check number)

Accounts Payable

Checks by Date - Summary by Check Date

User: nfuente
 Printed: 12/16/2021 10:16 AM



City of Livingston
 1416 C Street
 Livingston, CA 95334

Check No	Vendor No	Vendor Name	Check Date	Check Amount
5859	611	Baker Supplies and Repairs	12/09/2021	587.55
5860	193	BSK Associates	12/09/2021	518.00
5861	766	Central Valley Landscape & Tree	12/09/2021	5,923.00
5862	384	Cooling Shedd Air Conditioning Co.	12/09/2021	597.80
5863	429	DMV Renewal	12/09/2021	10.00
5864	163	EZ Auto Supply	12/09/2021	82.15
5865	164	Garza Tire & Wheel, Inc	12/09/2021	472.95
5866	505	GovInvest, Inc.	12/09/2021	6,000.00
5867	267	Hoffman Security	12/09/2021	84.05
5868	501	Hunt & Sons, Inc.	12/09/2021	9,204.39
5869	829	Jared Steeley Water & Wastewater Manage	12/09/2021	10,136.00
5870	521	Jim Brisco Enterprises, Inc.	12/09/2021	15,613.24
5871	830	LHS All Alumni	12/09/2021	250.00
5872	831	Livingston Sports Club	12/09/2021	500.00
5873	389	Mid Valley IT	12/09/2021	219.06
5874	180	Mission Linen Service	12/09/2021	342.38
5875	199	Northstar Chemical	12/09/2021	2,918.67
5876	302	Office Depot, Inc.	12/09/2021	308.52
5877	203	PG&E	12/09/2021	451.09
5878	554	Alvaro Ramirez	12/09/2021	154.00
5879	306	Ricoh USA, Inc.	12/09/2021	502.14
5880	309	St. Francis Electric	12/09/2021	4,200.00
5881	412	State of California Department of Transport	12/09/2021	75.17
5882	832	Tom's Truck Center	12/09/2021	1,860.44
5883	422	U.S. Bank Corporate Payment Systems	12/09/2021	7,195.95
5884	504	VIP Audio Visual Company, Inc	12/09/2021	500.00
Total for 12/9/2021:				68,706.55
5885	251	ABS Direct, Inc.	12/16/2021	11,225.30
5886	616	Adams Ashby Group, Inc.	12/16/2021	4,600.00
5887	833	Juan Aguilar Jr.	12/16/2021	574.40
5888	736	ARA, Inc.	12/16/2021	2,120.80
5889	253	AT&T	12/16/2021	229.64
5890	445	Axon Enterprise, Inc.	12/16/2021	2,107.40
5891	411	Harpreet Bains	12/16/2021	25.00
5892	162	Steve Bassi	12/16/2021	25.00
5893	538	Adanan Bath	12/16/2021	25.00
5894	815	Blodgett Catering	12/16/2021	956.32
5895	766	Central Valley Landscape & Tree	12/16/2021	5,923.00
5896	681	Central Valley Umpire Association	12/16/2021	336.00
5897	272	Charter Communications	12/16/2021	313.52
5898	291	City of Livingston c/o L & L District Irrigati	12/16/2021	8,074.81
5899	UB*01969	KARMEN CLAIRE	12/16/2021	79.53
5900	283	CoreLogic Solutions, LLC	12/16/2021	200.00
5901	518	Critical Reach, Inc.	12/16/2021	275.00
5902	825	Paola De la Torre	12/16/2021	150.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
5903	293	Department of Justice Accounting Office	12/16/2021	366.00
5904	491	Dutchman Drains & Plumbing Inc.	12/16/2021	255.00
5905	188	Frontier	12/16/2021	152.21
5906	159	Andres Fuentes	12/16/2021	25.00
5907	262	Gilton Solid Waste	12/16/2021	94,509.81
5908	811	Pete Hulse, DVM, Pa Hilmar Animal Hospi	12/16/2021	160.00
5909	UB*01971	LAS MORELIANA'S TAQUERIA	12/16/2021	165.03
5910	461	LEAF	12/16/2021	741.59
5911	615	McClatchy Company LLC	12/16/2021	120.50
5912	576	Mid Cal Pipeline & Utilities, Inc.	12/16/2021	210,548.47
5913	389	Mid Valley IT	12/16/2021	75.00
5914	180	Mission Linen Service	12/16/2021	52.92
5915	431	Monte Vista Small Animal Hospital	12/16/2021	957.20
5916	302	Office Depot, Inc.	12/16/2021	980.66
5917	UB*01968	LUZ ELENA ONOFRE	12/16/2021	66.25
5918	UB*01970	ISHVERBHAI PATEL	12/16/2021	0.46
5919	203	PG&E	12/16/2021	57,085.77
5920	535	Jason Roth	12/16/2021	25.00
5921	208	Saenz Pest Control, Inc.	12/16/2021	127.00
5922	739	Self- Help Enterprises	12/16/2021	3,332.43
5923	307	Shred-It, C/O Stericycle, Inc.	12/16/2021	257.59
5924	835	Solar Reflections Window Tinting	12/16/2021	324.75
5925	834	Speedy Bee Car Wash and Detail Center	12/16/2021	246.89
5926	323	Springbrook Holding company LLC	12/16/2021	1,646.00
5927	393	State of California	12/16/2021	635.83
5928	527	SWRCB Accounting Office	12/16/2021	90.00
5929	310	Totlcom, Inc.	12/16/2021	463.72
5930	284	Trans Union LLC	12/16/2021	359.56
5931	313	U.S. Bank Equipment Finance	12/16/2021	1,845.31
5932	693	USA Softball of Central Cal	12/16/2021	100.00
5933	367	Verizon Wireless	12/16/2021	2,413.65
5934	818	Renee Waite-Mendonca	12/16/2021	25.00
5935	536	Robert Wallis	12/16/2021	25.00
5936	287	West Coast Code Consultants, Inc.	12/16/2021	18,525.03
Total for 12/16/2021:				433,945.35
Report Total (78 checks):				502,651.90

STAFF REPORT

AGENDA ITEM: Adopt a Resolution Approving a Contract with CPS HR Consulting to Conduct Executive Recruitment Services

MEETING DATE: December 21, 2021

PREPARED BY: Vanessa Portillo, Interim City Manager

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving a contract with CPS HR Consulting to conduct executive recruitments.

BACKGROUND/DISCUSSION

Staff has encountered difficulties conducting the recruitment for its vacant Public Services Director position. The job was posted in local newspapers as well as governmental job websites for over a month without much success. Staff has requested a proposal from CPS HR Consulting to conduct the recruitments for Public Services Director and Chief of Police.

CPS HR specializes in the recruitment and selection of executive level professionals in city, county, state, special district, and non-profit agencies. Working in partnership with the governing body or selection team, CPS HR develops customized search strategies that focus on locating and recruiting qualified candidates who match the agency's unique needs.

CPS HR offers two (2) tiers of services: 1. Outreach only, and 2. Partial Recruitment. Under the partial recruitment option, CPS HR will develop a recruitment brochure, market the vacancy through their robust advertising platforms, and conduct preliminary screenings of candidates based on skills/qualifications. Staff recommends contracting CPS HR partial recruitment services for the City's current executive level vacancies. The proposed costs for this contract is \$38 thousand.

The City of Livingston's Municipal Code Title 1: Administrative, Chapter 11: Purchase Policies and Procedures, Section 1-1-10: Exempt from Bidding, exempts the City from bidding requirements for the contract of professional or specialized skills such as recruitment services.

FISCAL IMPACT

The recruitment outreach cost will be covered through salary savings from vacant positions in the City. The Finance Department will make the necessary adjustments between salary and contracted services expense accounts in the Fiscal Year 2021/22 Budget.

ATTACHMENTS

1. Resolution of the City Council of the City of Livingston Approving a Contract with CPS HR Consulting to Conduct Executive Recruitment Services
2. Proposal: CPS HR Consulting

RESOLUTION NO. 2021-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
APPROVING A CONTRACT WITH CPS HR CONSULTING FOR EXECUTIVE
RECRUITMENT SERVICES**

WHEREAS, City staff has encountered difficulties conducting the recruitment for its vacant executive leadership position(s); and

WHEREAS, City of Livingston's Municipal Code Title 1: Administrative, Chapter 11: Purchase Policies and Procedures, Section 1-1-10: Exempt from Bidding, exempts the City from bidding requirements for the contract of professional or specialized skills such as recruitment services; and

WHEREAS, City staff recommends CPS HR to provide partial recruitment services for hiring executive leadership position(s); and

WHEREAS, CPS HR partial recruitment services are estimated to be \$38 thousand; and

WHEREAS, the Finance Department will make the necessary adjustments between salary and contracted services expense accounts in the Fiscal Year 2021/22 Budget; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LIVINGSTON, THAT:

1. The above recitals are true and correct.
2. The City Manager of the City of Livingston is authorized to execute the agreement and any and all documents necessary to effectuate the work on behalf of the City.
3. This resolution is effective immediately upon adoption.

Passed and adopted this 21st day of December, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Juan Aguilar Jr., 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 21st day of December, 2021.

Monica Cisneros, Deputy City Clerk
of the City of Livingston

PROPOSAL

City of Livingston

Executive Recruitment Services for Public Services Director and Police Chief

November 23, 2021

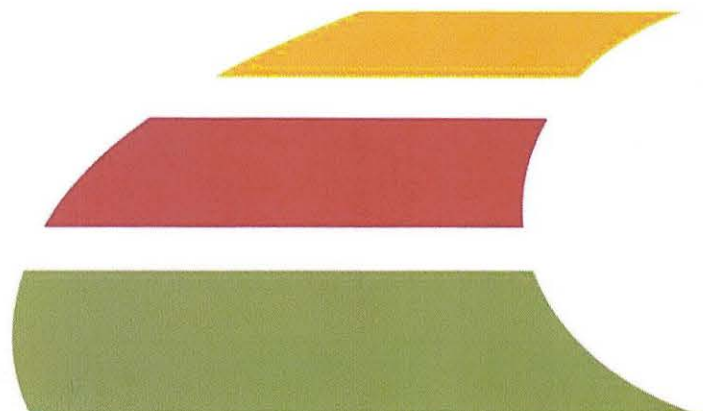
SUBMITTED BY:

MELISSA ASHER

Sr. Practice Leader, Products and Services

CPS HR Consulting
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Sacramento, CA 95834
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masher@cpshr.us
Tax ID: 68-0067209

www.cpshr.us



Your Path to Performance

November 23, 2021

Vanessa L. Portillo, Interim City Manager
City of Livingston
1416 C St.
Livingston, CA 95334

Submitted via email to: vportillo@livingstoncity.com

Subject: Executive Recruitment Services for Public Services Director and Police Chief

Dear Ms. Portillo:

CPS HR Consulting (CPS HR) is pleased to have the opportunity to submit a proposal to assist the City of Livingston (City) with the recruitment of a new Public Services Director and a new Police Chief. We are uniquely qualified to undertake this effort as we have vast experience in assisting public agencies with executive search, screening, and placement.

We understand that each agency is unique, and our extensive experience allows us to tailor our process to specifically meet your needs. Our work with local government agencies throughout the United States gives us an in-depth understanding of government operations, programs, and services.

Each recruitment is an opportunity to shape and prepare your organization for the future. We understand how important this transition is for you and are perfectly placed to assist you in this endeavor. Once this project begins, we will work with the City to tailor our process to highlight this exciting opportunity and attract the best possible candidates.

It is our commitment to work in partnership with your organization to a successful result.

Thank you for the opportunity to be considered for this assignment. Should you have questions or comments about the information presented in this proposal, **please contact me at masher@cps hr.us or (916) 471-3358.**

Sincerely,



Melissa Asher
Senior Practice Leader, Products and Services

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Our Approach and Methodology

Key Stakeholder Involvement

The City Manager on behalf of the City of Livingston must be intimately involved in the search for a new Public Services Director and Police Chief. Our approach assumes their direct participation in key phases of the search process. At the discretion of the City Manager, other key stakeholders may also be invited to provide input for the development of the candidate profiles.

City's Needs

A critical first step in a successful executive search is for the City Manager to define the professional and personal qualities required of the Public Services Director and Police Chief. CPS HR has developed a very effective process that will permit the City Manager to clarify the preferred future direction for the City; the specific challenges the City is likely to face in achieving this future direction; the working style and organizational climate the City Manager wishes to establish with the Public Services Director and Police Chief; and ultimately, the professional and personal qualities required of the Public Services Director and Police Chief.

Commitment to Communication

Throughout the recruitment process, we are strongly committed to keeping you fully informed of our progress. We will collaborate with you to provide updates on the status of the recruitment via your preferred method of communication (phone conference, email, etc.).

We place the highest level of importance on customer service and responding in a timely manner to all client and candidate inquiries. Our previous clients and candidates have expressed a sincere appreciation for our level of service and responsiveness to the management of the recruitment process. As a result, we have many long-term relationships with clients that have led to opportunities to assist them with multiple recruitments.

Aggressive, Proactive, and Robust Recruitment

We take an aggressive approach in identifying and recruiting the best available candidates. There are those candidates who would gladly rise to the professional challenge and apply for this position; however, some of the best candidates are often not actively seeking a new position and may only consider a change once we present them with your opportunity. Evoking the sense of vision and opportunity in qualified persons is among the responsibilities of CPS HR, and we pride ourselves in our efforts to reach the best available potential candidates. We use advertisements, directly email the outreach brochure, post messages and connect with potential candidates on business media such as LinkedIn, and of course, pick up the phone and call qualified individuals and referral sources.

Diversity Outreach Process

CPS HR strives to attract the most highly qualified, diverse candidate pool possible. We are pleased that our diligent efforts have resulted in more than 51% of our executive level placements being minority and/or female candidates within the past three years. Our City Manager search for the City of East Palo Alto is an excellent example of our diverse outreach process. The City's demographics are 6% White, 16% Black, 4% Asian, 7% Pacific Islander, 64% Hispanic, and 3% Other. It was a high priority of the Mayor and City Council to pursue and demonstrate a diverse outreach process.

We accomplished this by advertising with organizations like the National Forum for Black Public Administrators and the Local Government Hispanic Network in order to reach these specific population groups. We also sought candidate referrals from local subject matter experts and the national leadership of groups like Women Leading Government. By taking the time to directly contact these influential industry experts, we ensured that we captured the maximum number of distinguished candidates – particularly those who are well-known in their industries, but who may not be actively looking for a new job.

The result was an incredibly diverse finalist group and our successful placement was an experienced Hispanic candidate. The elected officials were quite pleased with the process and end result. In fact, one Councilmember mentioned that he had checked with neighboring communities behind the scenes regarding their recent recruitments and could confirm that our candidate pool was most impressive in comparison – likely in terms of quantity, quality, and diversity.

Scope of Work

Our proposed executive search process is designed to provide the City with the full range of services required to ensure the ultimate selection of a new Public Services Director and Police Chief who is uniquely suited to the City's needs. We understand that the City is interested in a partial recruitment. CPS HR offers two options, **Outreach Only** or **Partial Recruitment** services to meet the City's needs.



Phase I: As desired by the City, our consultant will meet with the City Manager and other City representatives to ascertain the City's needs and ideal candidate attributes, to target our search efforts, and maximize candidate fit with the City.

Phase II: The recruitment process is tailored to fit the City's specific wants and needs, with targeted advertising, combined with contacts with qualified individuals from our extensive database.

Below is a breakdown of the services included in each recruitment option followed by the full description of each phase.

Task	Description	Outreach	Partial
Phase I - Develop Candidate Profile and Recruitment Strategy			
1	Finalize Schedule		X
2	Hold Key Stakeholder Meetings	X	X
3	Develop Candidate Profile	X	X
4	Develop Recruitment Brochure		X
Phase II – Aggressive, Proactive, and Robust Recruitment			
1	Place Ads		X
2	Identify and Contact Potential Candidates	X	X
3	Review Application Materials		X
4	Conduct Screening Interviews		X
5	Submit Client Report		X
6	Client Meeting to Select Semifinalists		X
7	Notify Candidates		X

Phase I - Develop Candidate Profile and Recruitment Strategy

Task 1 - Review and Finalize Executive Search Process and Schedule

Task 2 - Key Stakeholder Meetings

Task 3 - Candidate Profile and Recruitment Strategy Development

Task 4 – Develop Recruitment Brochure

The first step in this engagement is a thorough review of the City's needs, culture and goals; the executive search process; and the schedule. CPS HR is prepared to meet with key stakeholders to obtain input in developing the ideal candidate profile and to assist us in understanding key issues and challenges that will face a new Public Services Director and Police Chief. Activities will include:

- Identifying key priorities for the new Public Services Director and Police Chief and the conditions and challenges likely to be encountered in achieving these priorities.
- Describing the type of working relationship the City Manager wishes to establish with the Public Services Director and Police Chief.
- Generating lists of specific competencies, experiences, and personal attributes needed by the new Public Services Director and Police Chief in light of the discussions above.
- Discussing recruitment and selection strategies for the City Manager's consideration to best produce the intended results.

CPS HR will provide a summary to the City stemming from these activities as an additional source of information for developing the candidate profile and selection criteria.

Following the completion of the tasks above, CPS HR will work with a professional graphic artist to design a recruitment brochure and present it to the City for review prior to printing. Please refer to **Appendix A** for a sample brochure. Additional brochure examples are available on our website at www.cpshr.us/search.

Phase II – Aggressive, Proactive, and Robust Recruitment

Task 1 – Identify and Contact Potential Candidates

Task 2 – Resume Review and Screening Interviews

Task 3 – City Manager Selects Finalists

The recruitment process is tailored to fit the City's specific wants and needs, with targeted advertising, combined with personal contacts with qualified individuals from our extensive database.

CPS HR will prepare, submit for your approval, and publish advertisements in appropriate magazines, journals, newsletters, job bulletins, and websites to attract candidates on a nationwide, regional, local or targeted basis based on the recruitment strategy.

Within the past three years, more than 51% of our executive level placements have been minority and/or female candidates.

As a consulting firm that interacts with hundreds of public sector executives during engagements, we have a cadre of individuals who we inform of recruitments, both to increase the visibility of the opening and to attract appropriate individuals who fit the special needs of our client. Communication with these professionals ensures that an accurate picture of the requirements of the job is apparent and proliferated throughout their professional networks.

CPS HR will prepare an email distribution list containing prospective candidates and referral sources. These individuals will receive a link to the Public Services Director and Police Chief brochure along with a personal invitation to contact CPS HR should they have any questions about the position.

CPS HR maintains a comprehensive, up-to-date database of industry leaders and experienced professionals; however, we do not rely solely upon our current database. We also conduct research to target individuals relevant to your specific needs and expectations to ensure that we are thorough in our efforts to market this position to the appropriate audience and to garner a diverse and quality pool of candidates.

We will:

- Convey a strong sense of the purpose and strategy of the City. For many talented individuals, understanding these aspects is one of the key motivators to compete in such an environment.
- Provide guidance and resources to candidates regarding the area's cost of living, mean and median housing prices, higher education opportunities, K-12 education information, and other aspects of interest to those who are considering relocating to the area.
- Actively seek highly qualified candidates who may be attracted by the prospect of collaboration with other departments, providing exceptional leadership to the City or continuing to ensure the public confidence in the integrity of the City.

CPS HR will directly receive and initially screen all resumes. This screening process is specifically designed to assess the personal and professional attributes the City is seeking and will include a thorough review of each candidate's resume, and if applicable, supplemental questionnaire responses and other supporting materials. CPS HR will spend extensive time ascertaining each candidate's long-term career goals and reasons why the candidate is seeking this opportunity, as well as gaining a solid understanding of the candidate's technical competence and management

philosophy. We will gather data on any other unique aspects specific to this recruitment based upon the candidate profile, as well as conduct internet research on each candidate interviewed.

CPS HR will prepare a written report that summarizes the results of the recruitment process and recommends candidates for further consideration by the City Manager. Typically, the report will recommend five to eight highly qualified candidates and will include resumes and a profile on each interviewee's background. CPS HR will meet with the City Manager to review this report and to assist them in selecting a group of finalists for further evaluation.

Project Timeline

The project team CPS HR has selected is prepared to begin work upon receipt of a fully-executed contractual agreement. All search activities up to and including the selection of a new Public Services Director and Police Chief can be completed in about 10 to 12 weeks. The precise schedule will depend on the placement of advertising and the ability to schedule, as quickly as possible, the initial meeting. A proposed schedule of major milestones is presented below.

Task Name	Month 1				Month 2				Month 3			
Weeks	1	2	3	4	5	6	7	8	9	10	11	12
Initial Meeting/Candidate Profile	➤											
Draft Brochure		➤										
Brochure Approved/Printed Place Ads			➤									
Aggressive Recruiting							➤					
Final Filing Date							➤					
Preliminary Screening									➤			
Present Leading Candidates to City										➤		
Weeks	1	2	3	4	5	6	7	8	9	10	11	12

Professional Fees

Professional Services

Our professional fixed fee covers all CPS HR services associated with two pricing options:

1. **Outreach Only**
2. **Partial Recruitment**

In the table below we have shown the cost for each option so that the City can determine the desired level of service for each position.

Professional Fixed Fee*	
Outreach Only (includes brochure and placement of advertising)	\$8,000
Partial Recruitment	\$19,000

*Professional fees would be billed and paid monthly.

The range of totals for the two recruitments would be:

Possible Total Cost for 2 Recruitments (depending on options selected)	
2 Outreach Only	\$16,000
1 Outreach Only & 1 Partial	\$27,000
2 Partials	\$38,000

Optional: Recruitment Video

In addition to the standard recruitment brochure, CPS HR can develop a recruitment video to attract a wider range of applicants. More than 63% of organizations are now using visual media to attract the attention of job seekers, convey the culture of the organization, and effectively expand the talent pool. When comparing searches that include a video with searches that do not include a video, our data indicates that those with a video garner over 40% more applications. For this approximately three-minute video, CPS HR will arrive onsite to film footage of the work place and community, as well as conduct onsite interviews with selected employees. This video is optional and costs **\$3,500**.

We thank you for your consideration of our proposal. We are committed to providing high quality and expert solutions and look forward to partnering with the City of Livingston in this important endeavor.

STAFF REPORT

AGENDA ITEM: Adopt a Resolution Ratifying Amendments to the Memorandum of Understanding (MOU) between the City of Livingston and the Public Works and Parks Employees Unit

MEETING DATE: December 21, 2021

PREPARED BY: Vanessa Portillo, Interim City Manager

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution ratifying the MOU for the Public Works and Parks Employees Unit.

BACKGROUND

The City of Livingston Clerical Employees Association's MOU expired on June 30, 2021. The City started its labor negotiation meetings in the Spring 2021. The Interim City Manager has negotiated additional compensation and benefit, at the direction of City Council, and the bargaining unit known as the Public Works and Parks Employees Unit has accepted and agreed to the proposed terms. The MOU is retroactive to July 1, 2021 and will be in effect through June 30, 2024.

DISCUSSION

Compensation and benefits negotiated include the following:

- Cost of Living Adjustment (COLA) of 3% effective July 1, 2021
- The City shall continue to offer medical, dental, vision, long term disability and life insurance plans as those currently structured or as the plans may be amended from time to time by the plan providers, and will continue to pay the negotiated portion of all premiums associated with the cost of providing these benefits for eligible employees under this bargaining group.
- Issuing a stipend from the American Relief Program (ARP) funds according to the hazard pay guidelines

FISCAL IMPACT

Negotiated terms have been included in the Fiscal Year 2021/22 Budget.

ATTACHMENTS

1. Resolution of the City Council of the City of Livingston Ratifying Amendments to the Memorandum of Understanding (MOU) between the City of Livingston and the Public Works and Parks Employees Unit

RESOLUTION NO. 2021-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON RATIFYING AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF LIVINGSTON AND THE PUBLIC WORKS AND PARKS EMPLOYEES UNIT

WHEREAS, the City of Livingston, through its City Manager, has negotiated new terms which will alter or change the existing Memorandum of Understanding (MOU), as it applies to the Public Works and Parks Employees Unit; and

WHEREAS, the City Council desires now to ratify those changes in the MOU as negotiated and approved by the parties; and

WHEREAS, the term of this MOU becomes effective July 1, 2021 and continue in effect until June 30, 2024 unless modified, changed, or otherwise altered by force or law or by mutual agreement between the parties of this agreement; and

WHEREAS, the MOU has been updated to reflect all the negotiated terms of the agreement (EXHIBIT A); and

WHEREAS, The Finance Department will process any adjustments to supplemental schedules impacted by the MOU; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LIVINGSTON, THAT:

1. The above recitals are true and correct.
2. This resolution is effective immediately upon adoption.

Passed and adopted this 21st day of December, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Juan Aguilar Jr., 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 21st day of December, 2021.

Monica Cisneros, Deputy City Clerk
of the City of Livingston

**CITY OF LIVINGSTON
AFSCME LOCAL 2703, DISTRICT COUNCIL 57
ON BEHALF OF THE
PUBLIC WORKS AND PARKS EMPLOYEES UNIT
MOU**

JULY 1, 2021 – JUNE 30, 2024

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Local 2703, Council 57, American Federation of State, County and Municipal Employees, AFL-CIO, and representatives of the City of Livingston have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of employees in the representation units listed in Section 1, have exchanged freely information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations to such employees.

SECTION 1 - RECOGNITION

Local 2703, Council 57, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union" or "AFSCME Local 2703" is recognized as the majority representative as provided in the City's Personnel Rules and Regulations for all employees assigned to the classifications set forth in Appendix "A", which is attached hereto and incorporated herein by reference.

1.1 City Council Approval

It is agreed that this Memorandum of Understanding is not in force or effect until ratified and approved by Resolution hereby adopted by the City Council of the City of Livingston.

1.2 Conflict of Memorandum or Resolution

It is understood and agreed that there exists within the City Personnel Rules and Regulations per Resolution No. 87.30.

SECTION 2 – UNION SECURITY

At the time a new employee is hired who will be subject to this agreement, the City shall deliver to the employee a written notice stating that the City acknowledges the Union as the recognized employee organization for the employees covered by this agreement.

2.1 New Hires

City shall notify the Union, in writing, of all new hires within seven (7) days after the initial hire date. The information provided shall contain name, job title, department, work location, work, home, and personal cellular phone numbers, personal email on file with the City and home address. Notwithstanding the foregoing, City shall not disclose the personal email address, cellular and/or home phone number and/or home address of any employee who submits a written request that such information remain private. The City shall provide a list of all previously stated information for all employees working for the City in the covered classifications at least once every 120 days (January 1, May 1 and September 1 of every year), with the exception of those employees who have requested in writing that the information remain private.

When a new employee orientation/on boarding is scheduled, the Union will receive an invitation to such at least ten (10) days in advance of scheduled date of orientation/on boarding unless there is an unforeseeable urgent need requiring a shorter notice period, pursuant to California Government Code section 3556. City will allow the Union to meet with new employees hired into the bargaining unit for a total of 30 minutes during the employee orientation.

Payment of dues shall be by payroll deduction. Upon receipt of written certification by the Union that an employee has signed a deduction authorization, the City will deduct the appropriate dues or fees from the employee's pay, as established and as may be changed from time to time by the Union and will remit such dues or fees to the Union. Employee requests to cancel or change deductions must be directed to the Union, rather than City. Payroll deductions will cease or be modified upon receipt of written certification from the Union that the employee has revoked or modified the deduction authorization for dues or fees. Payroll deductions for new members authorizing dues deduction will become effective the first pay period following City's receipt of the written certification of authorization. Revocations or modifications of authorizations will become effective the first pay period following City's receipt of the written certification of revocation or modification. Neither the City nor the Union will discriminate against any unit member because of the exercise of their statutory rights.

In accordance with Government Code 1157.12, the Union agrees to hold the City harmless from all claims, demands, suits or other forms of liability that may arise against City for or on account of any deduction made from the wages of such employees pursuant to this MOU.

2.2 Voluntary Contributions to "AFSCME PEOPLE"

The City agrees to deduct from the paycheck of all employees, who have elected to contribute and are covered by this Memorandum of Understanding, voluntary contributions to AFSCME PEOPLE (Public Employees Organized to Promote Legislative Equality). The Union shall notify the City of the monthly amounts designated by each contributor/employee that are to be deducted from his/her paycheck on a bi-weekly basis for each period worked. The employee shall make the designation for the voluntary contribution.

The City shall transmit to AFSCME Local 2703 on a monthly basis in one (1) check the total amount deducted along with a roster indicating the name of each employee on whose behalf a deduction is made and the amount deducted from that employee's paycheck

2.3 Communication With Employees

The Union shall be provided suitable space on bulletin boards at each work location for posting notices concerning official Union business.

2.4 Advance Notice

The Union shall be given reasonable advance written notice of any ordinance, resolution, rule or regulation directly relating to matters within the scope of representation proposed to be adopted by the City. The City shall meet and confer with the Union on any new policies or changes in

existing policies. The Union shall have thirty (30) days to review the policy and/or changes and upon agreement between the City and the Union, the policy will be posted for ten (10) working days at the work site before taking effect.

2.5 List of Unit Employees

The City shall furnish the Union with the names and classifications and date of hire of employees newly assigned to the unit and employees leaving the unit.

SECTION 3 – MANAGEMENT RIGHTS

The employer reserves and retains, solely, exclusively, all management rights and authority, including the rights set forth by law, except as specifically abridged or modified by this agreement.

SECTION 4 – NO DISCRIMINATION

The City agrees not to discriminate against any employee because of membership in the Union. The Union agrees not to discriminate against any employee for non-membership in the Union. Union activities shall not interfere with the normal operation of the City. See Section 4.1 of Personnel Rules and Regulations.

SECTION 5 – UNION STEWARDS AND OFFICIAL REPRESENTATIVES

5.1 Stewards

The Union shall be entitled to one (1) Steward for each ten (10) employees who shall restrict their activities to the handling of grievances and shall be allowed a reasonable amount of time for this purpose. The Union shall notify the City Manager in writing of the name/names of the Steward/Stewards.

5.2 Representative of the Union

An authorized representative of the Union shall be allowed to visit the work location for the purpose of ascertaining whether this Memorandum of Understanding is being observed. This right shall be exercised reasonably. An authorized representative of the Union shall notify management in person, by phone, or electronically before proceeding to the work location. He/she shall not interfere with the normal conduct of work. Union meetings must be held after normal working hours or during lunch breaks with permission from management. Special permission for emergency (e.g.: time sensitive) Union meetings may be conducted during working hours with the permission of the Department Head or designee. The Bargaining Unit shall be allowed to meet in the staff breakroom up to one (1) time per month for a maximum of one (1) hour. Management must be notified in advanced.

5.3 Personnel Files and Disciplinary Actions

A copy of all written disciplinary actions shall be provided to the employee and filed in the employee's personnel file. Nothing shall be placed in the employee's personnel file until the employee has seen it. An employee shall have the right to answer such action in writing within ten (10) working days and such answer shall be filed in his/her personnel file. The employee shall have reasonable access to review his/her personnel file.

1. Employees have the right to access to his/her personnel file. In the absence of the employee, a signed statement by the employee authorizing the designated representative to review his/her personnel file and will be acceptable. Electronic notification is acceptable.
2. Disciplinary actions more than twelve (12) months old which were made a part of the employee's personnel file and for reasons that are non-related to any further disciplinary action, shall not be considered in such disciplinary action regarding the employee.
3. Written reprimands and disciplinary documents with 3 (three) days suspension or less, and verbal/written counseling memos shall be removed from an employee's personnel file after twelve (12) months as long as there has been no new related disciplinary actions.

SECTION 6 SALARY PLAN/COMPENSATION

6.1 Salary Schedule – see attached

The parties have agreed to use the Merced County CPI to determine the cola's. Future Cola's will be subject to meet and confer process annually only after the State of California has adopted its budget. Retroactivity shall be presumed to July 1, of each year unless the parties have specifically agreed otherwise.

Salary Plan Administration

See Section 3 of Personnel Rules and Regulations.

6.2 Salary Plan Administration, Original Appointment

See Section 3 of Personnel Rules and Regulations.

6.3 Salary Plan Administration, Advancement Within Salary Range

See Section 3 of Personnel Rules and Regulations.

- 6.3.1** A maximum of two (2) employees who obtain and maintain a pesticide certification shall be paid \$300 quarterly.

6.4 Salary Plan Administration, Salary Step after Promotion or Demotion

See Section 3 of Personnel Rules and Regulations.

6.5 Temporary Upgrading

An employee assigned by the Department Head to perform the duties of a higher-[aid classification shall receive an increase of five percent (5%) for all hours so worked at the higher classification, from the first hour worked provided, however, that the rate paid shall not exceed the top step of the classification, nor be less than the first step of the classification.

If the temporary upgrading of the employee's work lasts less than ten (10) consecutive working days, hours worked at the 5% increase in pay will be accumulated and paid quarterly on the first pay period in January, April, July or October.

A temporary assignment to a higher classification may not exceed six (6) months from the date the employee began working in the higher classification. In the event the temporary assignment lasts longer than six (6) months, the employee shall be deemed appointed to the higher classification. Time served in the classification shall be counted as time in the classification for the purpose of serving a new probation period.

6.6 Salary Plan, Pay Periods – See Section 3.3 of Personnel Rules and Regulations.

6.7 Bi-Lingual Pay

All individuals who after having passed a verbal test to determine that they are in fact bi-lingual, will receive incentive pay at a rate not to exceed \$600 per fiscal year, distributed quarterly.

6.8 Increases During Term of this Memorandum of Understanding, July 1, 2021 through June 30, 2024

For those employees within the bargaining unit, the Public Works and Parks Employees Unit shall receive a base salary adjustment on such dates as listed below.

Effective July 1, 2021, 3% base salary adjustment.

Effective July 1, 2022, 3% base salary adjustment.

Effective July 1, 2023, 3%base salary adjustment.

American Rescue Plan (ARP) Funds: City shall issue each eligible member of the Livingston Public Works and Parks Employees Unit a stipend totaling \$6,000 as allowed per the ARP Guidelines for hazard pay during the COVID-19 pandemic. The stipend will be issued in two \$3,000 payments. The first \$3,000 stipend will be paid on the first pay period of December 2021 and the second \$3,000 stipend will be issued on the first pay period following the receipt of the second ARP allocation.

6.9 The City agrees to meet and confer with the Union About establishing a career path for the Maintenance Worker and Custodial classification by March 2022.

SECTION 7 – PROBATION PERIOD

See Section 5.5 of Personnel Rules and Regulations. An employee who is not fulfilling the

requirements of the appointed position will be notified that his/her performance is unsatisfactory and will be evaluated at 30 day intervals for the final 90 days of the period. If performance is unsatisfactory after the 90 day period, the employee will return to the previous position held.

SECTION 8 – SENIORITY

See Section 6.3 of the Personnel Rules and Regulations.

SECTION 9 – TRANSFER, PROMOTION, EMPLOYMENT LISTS

9.1 Transfer

See Section 3.10 of Personnel Rules and Regulations.

9.2 Promotion

See Section 5.4 of Personnel Rules and Regulations.

9.3 Employment Lists for Promotion

See Section 5.3 of Personnel Rules and Regulations.

9.4 Time Off for Examinations

Promotional examinations scheduled by the City during an employee's regular working hours may be taken without any loss in compensation.

9.5 Preservation of Work

The City will not contract out work that will result in a reduction in the work force unless failure to do so would cause economic hardship on the community. The City shall show this economic hardship during a meet and confer session with the Union. The City will give a six (6) month notice to the Union and attempt to find jobs for the displaced employees with the contracting agency.

9.6 Reduction in Force (Layoffs)

When it becomes necessary to reduce the City's work force, employees shall be "laid off" on the basis of their seniority within the Public Works/Parks Department. See Section 6.1 of Personnel Rules and Regulations.

- a. Order of Layoff – See Section 6.1 of Personnel Rules and Regulations.
- b. Notice of Layoff

Before an employee is laid off, the employee and the Union shall be notified in writing of such contemplated layoff at least sixty (60) working days prior to the effective date of layoff.

9.7 Reinstatement

See Section 6.2 of Personnel Rules and Regulations.

9.8 Training

Both the City and Union agree that training is an important part of employment. Training will be provided by City for each employee to improve their job skills as well as providing an opportunity for advancement. The training provided will be fully funded by City with no cost to the employee and will be job related. Such training will not in any way guarantee employee advancement, but will assist such promotion when a position is available.

The City shall provide a reimbursement of any tuition, books, or other expenses as part of the Water or Waste Water Certificate effective 7/1/92.

9.8.1 The City will implement an interest free loan to assist Bargaining Unit members with the purchase of personal computers and software as approved by the City.

SECTION 10 – EVALUATIONS AND JOB DESCRIPTIONS

10.1 Evaluations – See Section 8.1 of Personnel Rules and Regulations

10.2 Job Descriptions

The City will meet and confer with the Union to review job descriptions of the classifications in this unit if the City makes any significant changes from the existing job descriptions.

SECTION 11 – RESIGNATION AND REINSTATEMENT

11.1 Resignation

See Section 7.1 of Personnel Rules and Regulations

11.2 Reinstatement

A permanent employee who has resigned in good standing will be considered for reinstatement to a vacant position of the same classification as the previous position within a period of two (2) years from the effective date of resignation. Reinstatement shall be made at the salary step last received by the returning employee.

A permanent employee who has resigned in good standing shall be allowed to reapply for a vacant position, but will be required to participate in oral interview process if there is one.

SECTION 12 – HOURS OF WORK – OVERTIME/CTO – PREMIUM WORK

Authorized work performed in excess of eight (8) hours in one day or more than forty (40) hours in a regular work schedule in one (1) week, shall constitute overtime. AFCME Public Works and Parks Employees may choose between CTO and paid overtime when they are required to work overtime. Paid overtime will be compensated at one and one-half the employee's regular hourly rate of pay. Association members will be allowed to accumulate a maximum of eighty (80) hours of CTO earned at a rate of 1.5 times actual overtime worked. All paid leave (vacation, holiday, sick leave) is considered time worked. The City shall not change work hours to avoid paying of overtime.

12.1 Breaks

Employees shall be entitled to take on fifteen (15) minute break mid-morning, and one fifteen (15) minute break mid-afternoon. Employees may take their break at their current work site, or they may use a City vehicle to drive to another location for their break. In any case the break time shall not exceed fifteen (15) minutes in the morning and fifteen (15) minutes in the afternoon, including driving time.

12.1.1 Lunch Breaks

- a. Employees will be entitled to one unpaid lunch break of thirty (30) minutes each work day. The lunch break shall not occur less than four hours into the shift or within two (2) hours of the time the shift ends. Employees may drive a City vehicle to one destination during their lunch break. An employee may combine the fifteen (15) minute afternoon break with the lunch break for a total of a forty-five (45) minute lunch break, of which fifteen (15) minutes shall be paid.
- b. Employees may drive a City vehicle to one destination during their lunch break. In any case the break time will not exceed forty-five (45) minutes (including the 15 minute afternoon break) or 30 minutes if the afternoon break is not taken concurrently with the lunch break, including driving time.

12.2 Temporary Employees

See Section 1.5 for definition and Section 3.5 of Personnel Rules and Regulations.

12.2a Call Back

Call back work is defined as work required of an employee when such employee is not on his/her regular shift, during the period that begins one (1) hour after the employees regular shift has ended and ends one (1) hour before the employees next regular shift is scheduled to begin.

12.2.1 Call Back Compensation

If an employee is required to and does report for work after he/she is called back, he/she shall be paid travel time at the overtime rate in addition to pay for time worked. The amount of travel time allowed will be the reasonable time it takes to travel from his/her home to wherever he/she is to report. He/she will be credited with the same amount of travel time to return home except

when the work for which he/she is called back continues until the beginning of his/her next regular scheduled shift; in such cases, travel time for returning home will not be paid. If an employee is called back and does report to work, he/she shall receive pay for a minimum of two (2) hours pay at the rate of 1 ½ times the employee's straight time rate of pay. Only one two (2) hour minimum call back allowance shall be paid in any call back period as defined in Article 12.2. Employees shall be paid at a rate of 1 ½ times the straight time rate for pay for all call back hours worked in excess of the minimum two (2) hours of call back time.

12.2.2 Call Back – Telephone Response

If any employee is contacted via telephone during the call back period defined in Section 12.2, the employee shall be paid in 15 minute increments at the rate of time and one half. For example, if the call lasts less than 15 minutes, the employee will be compensated for the full 15 minute increment at a rate of time and one half. If the call lasts for 20 minutes, the employee will be compensated for 30 minutes (two 15 minute increments). All calls made under this Section shall be authorized by the Public Works Director or City Manager

12.2.3 The City agrees to meet and confer with the Union about Call-Back, before July 1, 2016.

12.3 Mileage Allowance

An employee who is required by the City Manager to provide transportation for the performance of his/her job shall be compensated at a rate set by the City Council for all City employees.

12.4 Stand-By

- a. The City of Livingston agrees to pay Standby to one Public Works employee from the General Department/Division and one employee from the Wastewater Division at the rate of two (2) regular hours per day Monday through Friday and four (4) hours per day for each weekend day or Holiday.
- b. If an employee is called back to work, Section 12.2 shall apply. In addition to Section 12.2, The City will pay time and one-half for hours actually worked that exceed the two (2) hour call back minimum.
- c. The employee on call during weekdays will be the same employee that works the late shift from 8:00 AM to 5:00 PM that day.
- d. Regular full-time employees who are in the Maintenance Worker classification, Maintenance Mechanic, Public Works Lead Man and the Water/Wastewater Operator I, II, and III classifications are subject to Stand-By for the City of Livingston. All individuals are subject to Call-Back at the request of the Public Works Director or his/her designee.

- e. The City agrees to meet and confer with the Union about Stand-By, before July 1, 2016.

12.5 Work Schedule:

For employees on a 5-8 Schedule: Any employee who works more than eight (8) hours in one day or more than forty (40) hours per workweek shall be paid one and one-half (1 ½) times their regular rate for all hours worked in excess of eight (8) hours in one day or in excess of forty (40) hours per workweek. All paid leave (vacation, holiday, sick leave) is considered time worked. The City shall not change work hours to avoid paying overtime. **The FLSA workweek for employees on a 5-8 schedule shall begin Sunday at 12:01 a.m. and end the following Saturday at midnight.**

The City agrees to meet with the Union about the possibility of providing a 9/80 schedule.

SECTION 13 – HOLIDAYS

13.1 Holiday Pay

Regular full-time employees shall be entitled to observe all authorized holidays at full pay, not to exceed eight (8) hours for any one (1) day.

13.2 Recognized Holidays

If a holiday falls on a Sunday, the following Monday shall be observed and when a holiday falls on a Saturday, the preceding Friday shall be observed.

- A. Day before New Year's Day
- B. New Year's Day – January 1st
- C. Martin Luther King, Jr. –January (3rd Monday)
- D. President's Day– February (3rd Monday)
- E. Memorial Day – Last Monday in May
- F. Independence Day – July 4th
- G. Labor Day – First Monday in September
- H. Veteran's Day – November 11th
- I. Thanksgiving Day – Fourth Thursday in November
- J. Day after Thanksgiving
- K. Day before Christmas
- L. Christmas Day – December 25th
- M. Optional Holidays (2) – Must be taken before end of the fiscal year in each year of the agreement.

13.3 Worked Performed on a Holiday

Any regular full-time employee who is required to work on any of the holidays specified in subsection 13.2 shall receive regular pay for holidays plus one and one-half (1 ½) times regular pay for hours worked on a holiday.

13.4 Holiday During Vacation

In the event any of the holidays specified in subsection 13.2 occur while any employee is on vacation, the holiday shall not be charged to vacation.

SECTION 14 – VACATION LEAVE

14.1 Vacation Allowance

Regular full-time employees who have worked for the City six (6) months or more shall be entitled to vacation leave as follows: Upon completion of the initial six (6) month probationary period of employment, full-time employees shall be credited with forty (40) hours of vacation leave. Thereafter, in accordance with the following schedule:

<u>Length of Service</u>	<u>Vacation Earned</u>
1-2 Years	10 Days
3-4 Years	15 Days
5-14 Years	20 Days
15 Year on	25 Days (Ceiling)

An employee having a minimum balance of 160 hours of vacation shall have the option to sell back up to 80 hours total of unused vacation either in December or June annually.

Longevity Incentive

Employees shall be eligible for one additional week (40 hours) of vacation at the following rate:

- 10th Year = 1 week for that year
- 20th Year = 1 week for that year
- 25th Year = 1 week for that year
- 30th Year = 1 week for that year

The time shown shall be for one additional week in each of the mentioned years only, not retroactive.

14.2 Vacation Provisions

In the case of severance of employment, the employee shall be paid for vacation earned pro-rated on the basis of 1/12th of 1, 2, 3, 4, or 5 weeks' vacation whichever applies to each month or major fraction thereof or since the anniversary date of his/her employment.

Payment for each week of employment shall be for 40 hours at the applicable rate in effect at the time of vacation. Vacations may be split and taken at a time desired by the employee with prior approval of the Department Head.

Continuity of service for vacation shall be interrupted by layoff due to illness, accident or forced layoff by the employer of less than 30 days or leave of absence mutually agreed to by the employer and the employee.

In the selection of vacation time, preference shall be given to senior employees where vacation requests of employees conflict.

Vacation accrual will not be allowed over 280 hours. Employees will not receive any compensation for vacation hours in excess of 280 hours unless employee has requested and has been refused a vacation 30 days prior to exceeding 280 hours of accumulated vacation. If the employee has been refused a vacation, he must schedule a vacation as soon as working conditions will allow.

SECTION 15 – LEAVE PROVISIONS

15.1 Sick Leave

Sick leave accumulation shall commence the first day of employment at a rate of one day per month. The taking of sick leave shall commence upon the completion of one month of employment. Sick leave may be accumulated without limit.

Upon retirement each employee shall receive 100% of unused sick leave in cash, to a maximum of 1,560 hours. Any additional hours will be credited toward retirement.

Sick leave will be paid at 75% of accrued Sick Leave at time of layoff.

When an absence is for more than three (3) consecutive work days, the employee shall file a physician's certificate or personal affidavit with the immediate supervisor stating the cause and reasons of the absence. City may request a physician's verification of illness before paying any sick leave.

Unused sick leave shall be accumulated at the rate of ninety-six (96) hours a year. An employee shall be able to use sick leave with pay each year when illness of a member of the employee's immediate household necessitates such absence. Some verification of a personal sick leave is required. If an employee is absent on paid sick leave and a holiday occurs during such absence, the employee shall receive holiday pay for such holiday and such pay shall not be charged against the employee's sick leave credit.

In the event an employee voluntarily terminates employment with the City, fifty percent (50%) of unused sick leave shall be paid upon termination of employment.

In the event that Workers' Compensation payments cover all or part of the period during which sick leave is paid, the sum of the two shall not exceed the sick leave benefit payable for said period, and the unused portion of accumulated sick leave will continue to be credited to the employee.

15.2 Industrial Disability Leave

Any permanent employee of the City who has suffered any disability arising out of and in the course of employment, as defined by the Workers' Compensation laws of the State of California, shall be entitled to disability leave while so disabled without loss of compensation for a period of such disability to a maximum of sixty (60) day increments by the City for a total period of one (1) year, subject to examination confirmation of the continuing disability by a physician selected by the City every sixty (60) days.

During the period the employee is paid by the City, the employee shall assign or endorse to the City any benefit payment received as a result of Workers' Compensation Insurance coverage. The City reserves the right to withhold payment of any disability benefits until such time as it is determined whether or not the illness or injury is covered by Workers' Compensation.

The benefits of Sick Leave and Disability Leave shall be mutually exclusive at any one time, and no Disability Leave may be used for the purpose specified under subsection 15.1, Sick Leave, and no Sick Leave benefits may be used for the purposes specified under this subsection 15.2, Disability Leave.

Employees shall accrue vacation credit during an Industrial Disability Leave which does not exceed thirty (30) days of absence; employees shall not accrue vacation credit after they have been on Industrial Disability leave for a total of thirty (30) days in any one (1) year.

15.3 Limited Duty

Upon the advice of his/her physician, an employee may request and may be granted transfer to less strenuous or hazardous duties within their classification which the employee is qualified to perform for a period not to exceed one (1) year for non-work related injuries or illnesses, or in the case of work related injuries or illnesses, for the full recovery or rehabilitation period.

15.4 Funeral Leave

Employee shall be allowed a leave of absence with full pay for up to 40 hours (5) work days due to the death of a member of employee's immediate family. For purposes of this provision, immediate family shall include spouse, domestic partner, child (including legally adopted child), parent, grandparent, grandchild, step-parent, stepchild, sibling, step-sibling, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law of the eligible employee. Requests for bereavement leave for persons not listed above may be granted at the discretion of the City Manager of his/her designee. Time off for funeral or bereavement leave must be taken within time of service of the immediate family member.

15.5 Leave of Absence

Upon written request a leave of absence without pay may be granted to any permanent employee for a period not to exceed six (6) months for the following reasons:

1. Illness or disability not covered by sick leave.
2. Education or training which will benefit the employee, but that which is not paid by the employer.
3. Personal reasons: In the event of unusual or special circumstances, a leave of absence may be extended if recommended by the Department Head and approved by the City Manager.

A request for leave of absence without pay shall be made in writing to the Department Head stating the reasons for such request. For leaves of absence in excess of five (5) days, the Department Head shall submit the request with their recommendation to the City Manager.

All accumulated vacation time shall be exhausted prior to having been granted a leave of absence without pay. Any employee who does not return to work on the subsequent work day after the date of expiration, shall be considered terminate. The employee, while on authorized leave of absence, will not be eligible for accruing vacation and/or holidays.

15.6 Maternity Leave

A pregnant employee holding a permanent position shall be entitled to a leave of absence for up to one hundred twenty (120) days.

This leave shall commence upon certification from the employee's attending physician that she is no longer capable of performing the duties of her position.

Upon the advice of her physician, the employee may request a temporary transfer to a less strenuous or hazardous position carrying the same or lower salary which she is qualified to perform. However, nothing herein shall result in the displacement or transfer of other employees in permanent positions or the performance of unnecessary work.

Where it is the opinion of the Department Head that the employee should be placed on leave sooner than prescribed by her physician due to her inability to effectively or safely perform the duties of her regular position or of one which she has been or could otherwise be temporarily transferred, the employee may be required to undergo an examination by a second physician. The cost of this examination shall be paid by the City and shall not be ordered without prior approval of the City Manager.

During the first six (6) weeks of any such leave, the employee shall be entitled to utilize accrued sick leave benefits on the same basis as other employees who are temporarily disabled due to a non-industrial illness or injury.

After the first six (6) weeks of such leave, the employee shall be entitled to utilize accrued vacation. While the pregnant employee is on a paid leave status, service credits shall continue to accrue and the City shall continue payments toward group insurance and retirement coverage. Upon expiration of the approved leave, the employee shall be reinstated to her former position. Prior to the employee being reinstated, the Department Head may require a statement from the attending physician that the employee is physically capable of resuming the regular duties of her position.

An employee may, based upon medical factors, requires that her leave be extended beyond one hundred twenty (120) days and shall submit a supporting statement from her physician. The Department Head with the approval of the appointing authority may extend the leave for up to an additional thirty (30) days.

15.7 Military Leave

Military leave shall be granted in accordance with the provisions of State law. All employees entitled to military leave shall give the City Manager an opportunity within the limits of military regulations to determine when such leave shall be taken.

15.8 State Disability Insurance

The employee will pay the premium for S.D.I. coverage for Short-Term Disability.

15.9 Long-Term Disability

City will pay the premium for Long-Term Disability coverage.

15.10 ADA and MOU PROVISIONS

15.10.1 Because the ADA requires accommodations for individuals protected under the Act, and because these accommodations must be determined on an individual, case-by-case basis, the parties agree that the provisions of this Agreement may be disregarded in order for the City to avoid discrimination relative to hiring, promotion, granting permanency, transfer, layoff, reassignment, termination, rehire, rates of pay, job and duty classification, seniority, leaves, fringe benefits, training opportunities, hours of work or other terms and privileges of employment.

15.10.2 AFSCME recognizes that the City has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. AFSCME will be notified of these proposed accommodations prior to implementation by the City.

- 15.10.3 Any accommodation provided to an individual protected by the ADA shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in the grievance/arbitration procedure.
- 15.10.4 Prior to disregarding any provision of this Agreement in order to undertake required accommodations for an individual protected by the Act, the City will provide AFSCME with written notice of its intent to disregard the provision, and will allow AFSCME the opportunity to discuss options to disregarding the Agreement. However, as the City has a legal obligation to undertake required accommodations, such action shall not be subject to bargaining with AFSCME.

SECTION 16 – HEALTH AND WELFARE PLANS

16.1 Medical-Dental-Vision-Long Term Disability and Life Insurance

Effective February 1, 2006, for those employees known as the Public Works and Parks Employees Unit, the City of Livingston will pay all premiums associated with the cost of providing, dental, vision, long term disability and life insurance for full-time employees and their eligible dependents.

Effective February 1, 2006, the City of Livingston will assume full control over the benefit plans offered to the employees, including the selection and retention of any and all agencies involved in providing and maintaining medical, dental, vision, long term disability and life insurance benefits. The City agrees to continue to provide comparable or better benefit plans for the employees as long as the financial condition of the City is such that it can afford to cover the cost of providing the benefits.

Effective July 1, 2015, the City of Livingston shall contribute the following amounts monthly toward the total premium for medical plans; the employee is responsible for the balance of the premium cost, if any.

City Monthly Contribution Cap:

	Jan. 1, 2021	
	<u>PPO</u>	<u>EPO</u>
Employee Only	\$ 581.98	\$ 650.16
Employee + One	\$1163.96	\$1300.31
Family	\$1543.17	\$1720.41

Starting January 1, 2022, premium increases above the contribution caps below will be covered 60% employee and 40% City costs. The 60/40 premium increase split will continue for each year of the contract.

Bargaining unit members who opt out of participating in the group medical plans sponsored by the City, and who provide proof of their medical coverage in a group plan, will receive \$500 per month.

Effective July 1, 1997, Term Life Insurance in the amount of \$100,000 shall be provided to all members.

16.2 Retirement – Classic Members

The benefit contract in effect between the City of Livingston and the Public Employees' Retirement System (P.E.R.S.) in behalf of eligible permanent full-time employees of this unit as of July 1, 1989, shall be continued during the term of this Memorandum of Understanding. When the parties have agreed with the other affected units, the employer has agreed to do a single actuarial review.

The City will pay the employee's seven per cent (7%) contribution to P.E.R.S. Payments made on the employee's behalf by the City will remain in the employee's account. However, when removed by the employee at his or her termination of enrollment in P.E.R.S., or upon retirement, will be considered taxable income at that date. The City will notify each employee annually of the amount of tax deferred payment made to P.E.R.S. in his/her behalf.

Effective July 1, 1998, the members shall receive a modification to their PERS benefit providing for 2% at age 55.

City of Livingston shall amend the City's contract with the Public Employees' Retirement System (PERS) to provide the following additional benefit as provided by Section 20042 of the Government Code:

The period for determining the average monthly pay rate when calculating retirement benefits will change from the 36 highest paid consecutive months to the 12 highest paid consecutive months. (Applicable only to members retiring or whose death occurs after the effective date of the contract amendment.)

16.2.1 Retirement – Classic Members

Effective upon execution of this agreement, AFSCME Public Works and Parks, Classic members will pay one percent (1%) of the Employee contribution to PERS.

Effective July 1, 2019, AFSCME Public Works and Parks, Classic members will pay an additional one percent (1%) of the Employee contribution to PERS.

Effective July 1, 2020, AFSCME Public Works and Parks, Classic members will pay an additional one percent (1%) of the Employee contribution to PERS.

16.2.2 Retirement – New Members

All employees hired on or after January 1, 2013, who are considered “new members” under the Public Employees’ Pension Reform Act (PEPRA) will be provided a CalPERS benefit formula of 2% at 62 for Miscellaneous and 2% at 57 for Safety.

In addition, “new members” shall be subject to the contribution requirements in Section 7522.30(a) and (c) of the PEPRA, and the City shall not pay any of the required employee contribution for “new members.”

16.3 Post Retirement Health Benefits

16.3.1 Employee must have been continuously employed by the City for twenty (20) years. Disruptions in service due to layoffs of exempted.

16.3.2 Post retirement health insurance for employee only shall be limited to the actual cost of insurance, not to exceed \$300.00 per month.

16.3.3 Disability retirement will be as if employee met the twenty (20) year employment requirement referred to item 16.3.1 above.

16.3.4 At age sixty-five (65), Medicare shall become the retired employees primary insurance.

16.4 Deferred Compensation

Effective January 1, 1998, the City will pay up to \$100 per month per employee in deferred compensation matching an equal amount contributed by the employee. The City’s match to deferred compensation is limited to a one year period beginning January 1 of the effective year. Employees must have five (5) years continued service, effective December 31, 1997, to qualify for this benefit. Members not currently eligible to receive this benefit shall do so upon their fifth anniversary and enjoy the City match for a one year period effective January 1 following their anniversary date.

SECTION 17 – SAFETY

17.1 Observance of Safety Rules and Regulations

Both the City and the Union shall expend every effort to insure that work is performed with a maximum degree of safety consistent with the requirement to conduct efficient operations.

Each employee covered by the Memorandum of Understanding agrees to comply with all safety rules and regulations in effect and any subsequent rules and regulations that may be adopted. Employees further agree that they will report all accidents and safety hazards to the appropriate management official immediately. Any employee having knowledge of or who is a witness to any accident, shall, if requested, give full and truthful testimony as to same.

An employee may refuse a dangerous work assignment if one or all of the following conditions exist and he or she immediately notifies his or her supervisor of the conditions:

1. He/she has a reasonable belief, based on what he/she knows at the time, that there is a real imminent danger of death or serious physical injury. If he/she has good reasons that other reasonable people would recognize, he/she may refuse the task even if it is later found that there was no imminent danger.
2. If he/she has asked his/her employer to eliminate the danger and the employer has failed to do so.
3. The danger is so imminent that it cannot be eliminated quickly enough through normal OSHA enforcement procedures.

17.1.1 Bargaining Unit members shall receive a series of three Hepatitis B shots at the Livingston Medical Clinic to be paid for by the City.

17.1.2 Bargaining Unit members shall receive Tetanus shots at the Livingston Medical Clinic to be paid for by the City.

17.2 Safety Program

The Public Works/Parks Safety Committee shall consist of three (3) representatives of the AFSCME Unit. This Committee shall meet regularly the first Wednesday of each month at an agreed upon time and place.

17.3 Safety Equipment

The city shall continue to supply employees with safety equipment required by the City and/or CALOSHA. All employees shall use City supplied safety equipment only for the purposes and uses specified under applicable safety rules and regulations.

The City agrees to reimburse the employee for work boots with steel shanks through a purchase order up to \$200.00 once a year. The City agrees to purchase Hernia Belts for each Public Works and Parks employee. They will be worn as needed by the employees.

17.4 Uniforms

The City will provide uniforms, including maintenance, for all employees in the Public Works/Parks Unit. Each employee shall receive a total of nine (9) uniforms. Employees shall receive five (5) clean uniforms each week and one for exchange. The City will provide one (1) new jacket for each member of this unit during this agreement. See Article 17.3 regarding work boots. Uniform: The City agrees to purchase reflective type jackets for all individuals who are represented by this Union. Jackets (worn out) will be replaced as determined by the Public Works Director or his/her designee.

SECTION 18 – DISCIPLINE

See Section 9 of Personnel Rules and Regulations.

SECTION 19 – GRIEVANCE PROCEDURE

See Section 10 of Personnel Rules and Regulations.

SECTION 20 – MODIFICATION OF AGREEMENT

No changes in this Memorandum of Understanding or interpretations thereof will be recognized, unless agreed to by the City Manager and the Union.

SECTION 21 – PAST PRACTICES AND EXISTING MEMORANDA OF UNDERSTANDING

This Memorandum shall supersede all existing and prior Memoranda of Understanding between City and the Union Resolutions and Ordinances which are in conflict with this agreement.

SECTION 22 – NEW WORK

In the event the City introduces new work which the Union believes does not fall within any of the existing classifications, the City and the Union shall, upon written request, meet and confer with respect to the assignment or classification of such work.

SECTION 23 – SEPARABILITY OF PROVISIONS

Should any section, clause or provision of this Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause, or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Memorandum of Understanding. In the event of such invalidation, the parties agree to meet and confer concerning substitute provisions for provisions rendered or declared illegal.

SECTION 24 – TERM

Upon ratification by the Union and approval of the City, this Memorandum of Understanding shall remain in effect beginning July 1, 2018 and continuing through June 30, 2021. The City may request to Meet and Confer with the Union in the event a financial disaster results in significant loss of revenue to the City. This Agreement may be re-opened at the request of either Party, one time each fiscal year during the term of the Agreement to discuss the subject wages and benefits only.

CITY OF LIVINGSTON:

AFSCME, LOCAL 2703:

City Manager

Date

Signature

Date

Employee Union Representative Date

Employee Union Representative Date

STAFF REPORT

AGENDA ITEM: Adopt a Resolution Approving the Declaration of City Property as Surplus and Authorizing its Disposal.

MEETING DATE: December 21, 2021

PREPARED BY: Erica Valencia – Accountant I

REVIEWED BY: Vanessa Portillo, Interim City Manager

RECOMMENDATION

Staff recommends that the City Council adopts a Resolution declaring City property as surplus and authorizing its disposal according to the Livingston Municipal Code, Title 1 Administrative, Chapter 12: Surplus Property.

BACKGROUND

From time to time as vehicles, equipment and other personal property of the City reach the end of their useful lives, the property is removed from service and dispose according to the City of Livingston Municipal Code, Title 1 Administrative, Chapter 12: Surplus Property.

DISCUSSION

Management has conducted a thorough inventory review of equipment and supplies. Each department has determined that the equipment and property in the attached surplus list (Exhibit A) is obsolete or have reached its useful life. The equipment listed has either been or will be replaced.

Firefighter protective ensemble or ensemble components must be retired from service no more than 10 years from the date the ensemble or ensemble components was manufactured. As fire gear reaches the end of their useful lives, the property is removed from service and/or disposed. The City's Municipal Code upon Council's approval authorize for the sale or disposal of surplus items.

Staff recommends Council approve the fire equipment be transferred to the Livingston High School fire training program. All other equipment will be disposed according to the City's Surplus Property Ordinance.

FISCAL IMPACT

Replacement equipment funds are budgeted in each department's budget as equipment reaches its useful life or becomes obsolete.

ATTACHMENTS

1. Resolution
2. Exhibit A – Proposed surplus items

RESOLUTION NO. 2021-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
APPROVING THE DECLARATION OF CITY PROPERTY AS SURPLUS AND
AUTHORIZING ITS DISPOSAL**

WHEREAS, the City of Livingston has identified the end of the useful lives of fire gear and other miscellaneous equipment; and

WHEREAS, Departments have conducted a review of inventory of fire gear to identify fire equipment that is no longer useable; and

WHEREAS, Staff recommends declaring the listed property (EXHIBIT A) as surplus and authorizing its disposal; and

WHEREAS, Staff recommends transferring the fire equipment to the Livingston High School fire training program; and

WHEREAS, All other equipment will be disposed according to the City of Livingston Municipal Code, Title 1 Administrative, Chapter 12: Surplus Property; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livingston does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The City Manager of the City of Livingston is authorized to execute the disposal of Surplus property.
3. This resolution is effective immediately upon adoption.

Passed and adopted this 21st day of December, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Juan Aguilar Jr., 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 21th day of December, 2021.

Monica Cisneros, Deputy City Clerk
of the City of Livingston

EXHIBIT A
Surplus Inventory List
December 21, 2021

Surplus Reason Codes: **A**-No longer needed **B**- Reached useful life **C**- Replaced **D**- Cost to repair higher than value **E**- Damaged/Not Working

QTY	Item	Model #	Size	Surplus Reason Code
Fire Department				
Boots				
14	Rubber Boots			B
Turnouts				
1	Coat	3656022	46/32	B
1	Coat	2894606	46/32	B
1	Coat	3656012	42/32	B
1	Coat	3656015	42/32	B
1	Coat	2768150	42/32	B
1	Coat	3656032	46/32	B
1	Coat	3809399	42/32	B
1	Coat	1621180	40/32	B
1	Coat	2768148	42/32	B
1	Coat	2894611	48/32	B
1	Coat	3656019	44/32	B
1	Coat	1621179	40/32	B
1	Coat	N/A	Medium	B
1	Coat	N/A	Large	B
1	Pants	3656027	34/28	B
1	Pants	3707742	34/30	B
1	Pants	3656042	48/32	B
1	Pants	3656034	38/30	B
1	Pants	2907049	36/30	B
1	Pants	2894621	38/30	B
1	Pants	2920296	38/28	B
1	Pants	3656031	36/30	B
1	Pants	3656041	40/32	B
1	Pants	1621197	34/26	B
1	Pants	2894625	38/32	B
1	Pants	3656030	36/28	B
2	Pants	N/A	Medium	B
1	Pants	N/A	Large	B
1	Pants	N/A	X-Large	B
Helmets				
4	Structure Helmet Buttard			B
2	Wildland Helmet, Bullard			B
Police Department				
Furniture				
1	Executive Desk			E
1	Filing Cabinet			E
1	Desk			E
Equipment				
1	20" TV			E
1	Sony DVD Player			E
1	Sharp 15" TV/VCR Combo			E

STAFF REPORT

AGENDA ITEM: Adopt a Resolution Ratifying the Contract between Merced County and the City of Livingston for Interim Chief of Police Services

MEETING DATE: December 21, 2021

PREPARED BY: Vanessa Portillo, Interim City Manager

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution ratifying the Contract between Merced County and the City of Livingston for Interim Chief of Police Services.

BACKGROUND/DISCUSSION

The City of Livingston is requesting ratification of a contract with Merced County to provide Interim Chief of Police services.

The Sheriff's Office has agreed to provide assistance to the City of Livingston's Police Department. Contracted services started November 22, 2021. The Sheriff's Office has agreed to provide Interim Chief of Police services through May 22, 2022 or until a Police Chief is hired by the City of Livingston.

The Sheriff's Office has assigned Lieutenant Charles Hale to act as Interim Police Chief. The total contract amount with Merced County is not to exceed \$250 thousand through the contract term.

FISCAL IMPACT

The contract term amount is not to exceed \$250 thousand. Interim Chief of Police services will be paid from the current budgeted salary account in the Police Department.

ATTACHMENTS

1. Resolution of the City Council of the City of Livingston Ratifying the Contract between Merced County and the City of Livingston for Interim Chief of Police Services
2. Interim Chief of Police Contract

RESOLUTION NO. 2021-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON RATIFYING
THE CONTRACT BETWEEN MERCED COUNTY AND THE CITY OF LIVINGSTON
FOR INTERIM CHIEF OF POLICE SERVICES**

WHEREAS, the City of Livingston entered into a contract with Merced County for Interim Chief of Police services on November 22, 2021; and

WHEREAS, the term of the contract extends through May 22, 2022; and

WHEREAS, the Sheriff's Office has assigned a Lieutenant to act as the Interim Police Chief; and

WHEREAS, the contract amount is not to exceed \$250 thousand through the end of contract term; and

WHEREAS, the Finance Department will make the necessary adjustments to the Fiscal Year 2021/22 budget to align appropriate expense accounts; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LIVINGSTON, THAT:

1. The above recitals are true and correct.
2. The Interim City Manager of the City of Livingston is authorized to execute the agreement.
3. This resolution is effective immediately upon adoption.

Passed and adopted this 21st day of December, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Juan Aguilar Jr., 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 21st day of December, 2021.

Monica Cisneros, Deputy City Clerk
of the City of Livingston

**AGREEMENT FOR SPECIAL SERVICES
BETWEEN
CITY OF LIVINGSTON
AND
MERCED COUNTY
CONTRACT NO. _____**

THIS AGREEMENT, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and the City of Livingston, located at 1416 C Street, Livingston, CA 95334 (hereinafter referred to as "City").

WHEREAS, County is authorized to establish and maintain a law enforcement agency to provide for the safety and protection of the general public through its Sheriff's Office; and,

WHEREAS, City desires to contract with County to obtain the services of a Lieutenant to perform the duties of an Interim Police Chief; and,

WHEREAS, County is specially trained, experienced, and competent to perform such services in connection with placement of an Interim Police Chief; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. COUNTY COVENANTS

The Sheriff of Merced County shall, after consulting with the City, designate a full time Lieutenant to serve as the Interim Police Chief in the City, covering Police Chief assignments as needed.

2. SCOPE OF SERVICES

A. Under the direction of the City Manager and Merced County Sheriff, the Lieutenant will exercise leadership and command over the personnel, activities and operations of the City of Livingston's Police Department; administer the Department budget and approve expenditures; represent the Department at City Council meetings; provide for public safety and compliance with applicable City, County, State and federal laws; work collaboratively with other municipal departments to ensure a solvent, vibrant and safe community for the City's residents and visitors; train, supervise and evaluate assigned personnel.

- B. The normal work week will be Monday through Friday.
- C. The Lieutenant will wear an approved Merced County Sheriff uniform during the assigned shift.

3. TERM

The term of this Agreement shall commence on the 22nd day of November, 2021, and continue until the 21st day of May, 2022, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CONVENIENCE", "TERMINATION FOR CAUSE" OR "NON-APPROPRIATION OF FUNDING", as set forth elsewhere in this Agreement.

4. COMPENSATION

City agrees to pay County an hourly rate of One Hundred Twenty-Five Dollars and 92/100 (\$125.92) per hour for hours engaged in the performance of such work, as are more specifically set forth under Section 1, "SCOPE OF SERVICES". Approved overtime will be reimbursed by the City at the current overtime rate of One Hundred Eight Dollars and 60/100 Cents (\$108.60) per hour. Total contract not to exceed Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00)

Furthermore, the City will reimburse County for mileage at a rate of Ninety-Six Cents (\$0.96) per mile for the patrol vehicle provided to the assigned Lieutenant. Mileage will be calculated for the time the Lieutenant is assigned to the City of Livingston.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of County and be mailed to County at:

Name:	Merced County Sheriff's Office c/o Merced County Auditor
Address:	2222 M Street
City/State/Zip:	Merced, CA 95340

County may request that City mail the check to County to such other address as County may from time to time designate to City. Such request must be made in writing in accordance with the procedures as outlined under Section 6, "NOTICES".

5. TERMS OF PAYMENT

Payment shall be for services required to be provided herein and as set forth under Section 1, "SCOPE OF SERVICES." Payment shall be made in the following manner:

County shall submit monthly itemized invoices for services it has provided and for the amount owed under this Agreement. Invoices shall be forwarded to the City at the City address indicated under Section "NOTICES" of this Agreement.

The fee due hereunder shall be paid to County within fifteen (15) days following receipt of the invoice.

6. NOTICES

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the City, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced c/o	City of Livingston
Merced County Sheriff	1416 C Street
2222 "M" Street	Livingston, CA 95334
Merced, CA 95340	Attn: City Manager

Any party may change its address by giving the other party notice of the

change in any manner permitted by this Agreement.

7. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by County at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, City shall have no further liability to County except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by City. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by County prior to, and in connection with, discontinuing the work hereunder.

8. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

9. INSURANCE

Prior to the commencement of work, and as a precondition to this Agreement, the Parties shall maintain Commercial General Liability (CGL) insurance with limits no less than \$1,000,000 per occurrence covering bodily injury, personal injury and property damage, Professional Liability Insurance with limits no less than \$1,000,000 per occurrence, Automobile Liability insurance with limits no less than \$1,000,000 per accident for bodily injury and property damage, and Workers Compensation Insurance as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident during the term of the Agreement.

Each party shall provide the other certificates of insurance upon request. Each party and its officers, employees, and agents shall be endorsed to the other's CGL policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.

10. INDEMNIFICATION

The City shall indemnify, defend, and hold harmless the County its officers,

officials, employees, and volunteers from and against any and all liability, claims, damage, costs, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the assigned Lieutenant's performance of work or his or her failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the active negligence by the County or the gross or willful misconduct of the assigned Lieutenant.

The County shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of the active negligence by the County or the gross or willful misconduct of the assigned Lieutenant during the performance of work hereunder.

If the City rejects a tender of defense by the County and/or the assigned Lieutenant under this Agreement, and it is later determined that the County and/or the assigned Lieutenant breached no duty of care and/or was immune from liability, the City shall reimburse the County and/or the assigned Lieutenant for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the County and/or assigned Lieutenant settles a liability claim, with or without participation by the City.

11. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that County is an independent entity in the performance of the work duties and obligations devolving upon County under this Agreement. The sole interest and responsibility of the County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and each party shall be responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers' compensation, unemployment insurance, social security, income tax, other statutes or codes applying to the other party, or its employees, if any.

It is mutually agreed and understood that City, its sub-contractors and employees, if any, shall have no claim under this Agreement or otherwise

against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

City shall insure that all its personnel and employees, its sub-contractors and their employees, used to receive the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

12. RECORDS AND INSPECTIONS

County shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, City shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

13. OWNERSHIP OF DOCUMENTS

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by County hereunder shall be the exclusive property of County and shall be delivered to County upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, and to the extent permitted by law, shall become the property of the County. City may retain copies thereof for its files and internal use. Any publication of the information directly derived from work performed, or data obtained in connection with services rendered under this Agreement, must first be approved in writing by County. All technical data, evaluations, plans, specifications, reports, and other work products are instruments of County's services and are not designed for use other than what is intended by this Agreement.

14. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

15. COUNTY NOT OBLIGATED TO THIRD PARTIES

County shall not be obligated or liable hereunder to any party other than City.

16. COMPLIANCE WITH STATE LAWS AND REGULATIONS

The parties agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to the parties, their subgrantees, contractors, or subcontractors, and their work.

17. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

18. WAIVER

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

19. BREACH OF CONTRACT

Upon breach of this Agreement by City, County shall have all remedies available to it both in equity and/or at law.

20. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

21. CONFLICT OF INTEREST

City covenants that it presently has no interest and shall not acquire any

interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. City shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the County. City shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables them to influence this Agreement, shall have any direct or indirect financial interest resulting from this Agreement or shall have any relationship to City or their officer or employee nor that any such person will be employed by City in the performance of this Agreement without immediate divulgence or such fact to the County.

22. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

The parties and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of the other party because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Each party shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of the other party's employees and agents, and recipients of services are free from such discrimination and harassment.

The parties represent that they are in compliance with and agree that they will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

The parties shall include this nondiscrimination provision in all subcontracts related to this Agreement.

23. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

24. ASSIGNMENT

The parties shall not assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent of the other party.

City hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, materials, or services by the City for sale to the County pursuant to this Agreement.

25. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Reduced compensation will allow County to withdraw from any service obligation.

26. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

27. LICENSE AND PERMITS

City shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

28. COVID REQUIREMENTS

The parties at their sole expense, shall follow all State and local laws, rules, regulations, guidelines, and orders related to the COVID-19 pandemic in the performance of its work under this Agreement. This shall include, but not be limited to, creating a COVID-19 worksite-specific prevention plan prior to conducting business/activities. The parties are encouraged to frequently reference www.covid19.ca.gov for information on State requirements for operation of specified businesses/activities

Signature page to follow

County of Merced

By 
Daron McDaniel

Chair, Board of Supervisors

DEC 7 2021

Dated

City of Livingston


By 
Vanessa Portillo

Acting City Manager

11/22/2021

Dated

Merced County Sheriff

By 
Vernon H. Warnke

Sheriff-Coroner

APPROVED AS TO LEGAL FORM
MERCED COUNTY COUNSEL

By 
Jenna Anderson

11-23-21

Dated

STAFF REPORT

AGENDA ITEM: Resolution Approving Entering Into an Agreement with Vanessa Portillo for Permanent City Manager Services

MEETING DATE: December 21, 2021

PREPARED BY: Tom Hallinan, City Attorney

RECOMMENDATION

Based upon direction received by the City Council, it is recommended to adopt a Resolution Approving Entering into an Agreement with Vanessa Portillo for Permanent City Manager Services.

BACKGROUND

The City of Livingston is a general law city. As such, the day -to- day operations of the city are vested in a City Manager.

DISCUSSION

Vanessa Portillo has been previously employed by the City of Livingston as both its Finance Director and Interim City Manager. She has served ably and admirably in both of these high-level administrative positions. Accordingly, the Council has directed staff to prepare a Resolution and Contract to formalize the permanent hiring of Ms. Portillo as City Manager.

FISCAL IMPACT

There will be no additional fiscal impact to the City greater than that previously incurred with the previous City Manager.

ATTACHMENTS

1. Resolution
2. Agreement

RESOLUTION NO. 2021-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
APPROVING AN EMPLOYMENT AGREEMENT FOR EMPLOYMENT OF VANESSA
PORTILLO AS CITY MANAGER**

WHEREAS, Vanessa Portillo has served as Interim City Manager for the City of Livingston since July 23, 2021; and

WHEREAS, the City desires to employ Portillo as its permanent City Manager in accordance with applicable provisions of the City's Municipal Code and the terms of the Employment Agreement attached hereto; and

WHEREAS, Portillo desires to be employed as the City Manager for the City in accordance with applicable provisions of the City's Municipal Code and the terms of the attached Employment Agreement; and

WHEREAS, the current annual salary for the position of City Manager under this Agreement has been set by the City Council as One Hundred Eighty Four Thousand Six Hundred Twenty Dollars (\$184,620); and

WHEREAS, it is the desire of the City Council to provide certain benefits and establish certain conditions of employment for the position of City Manager pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Employment Agreement. The City Council hereby approves the Employment Agreement between the City and Vanessa Portillo attached hereto as Exhibit "A" and authorizes the Mayor to execute the same.

Section 2. Severability Clause. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not effect any other position of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall take effect immediately upon its passage.

Passed and adopted this 21st day of December 21, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Juan Aguilar Jr., 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 21st day of December, 2021.

Monica Cisneros, Deputy City Clerk
of the City of Livingston

CITY OF LIVINGSTON
AGREEMENT FOR EMPLOYMENT OF CITY MANAGER

This Employment Agreement (this “**Agreement**”) is made and entered into this ___ day of December 2021, by and between the City of Livingston, a general law city (the “**City**”), and Vanessa Portillo, an individual (“**City Manager**” or “**Portillo**”).

RECITALS

WHEREAS, Portillo has served ably and admirably as Interim City Manager; and

WHEREAS, the City desires to continue the services of Portillo as City Manager for the City of Livingston in accordance with applicable provisions of the City’s Municipal Code and the terms of this Agreement; and

WHEREAS, Portillo desires to continue to be employed as the City Manager for the City in accordance with applicable provisions of the City’s Municipal Code and the terms of this Agreement; and

WHEREAS, the current annual salary for the position of City Manager under this Agreement has been set by the City Council as One Hundred Eighty-Four Thousand Six Hundred Twenty Dollars (\$184,620); and

WHEREAS, it is the desire of the City Council to provide certain benefits and establish certain conditions of employment for the position of City Manager through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

TERMS

1. Appointment of City Manager:

The City Council hereby appoints Portillo to the position of City Manager in and for the City of Livingston, California, and Portillo hereby accepts such appointment under the terms and conditions of this Agreement.

2. Term of Agreement:

This Agreement will continue indefinitely unless terminated pursuant to the provisions of Section 5 of this Agreement.

3. At-Will Employment:

Portillo is an “at-will” employee who shall serve at the pleasure of the City Council. Accordingly, the City Council may terminate Portillo’s employment under this Agreement at any time, with or without cause. This provision may not be altered except by a written instrument executed by Portillo and formally approved by the City Council, which specifically references this Agreement.

4. Duties and Responsibilities:

It is recognized that City Manager devotes a great deal of time outside the normal City Hall office hours schedule and to that end he/she shall be allowed to establish his/her work schedule taking into consideration that he/she is responsible for the supervision of employees and has responsibilities to serve all departments of the City.

a. Portillo shall commence her duties immediately upon approval of this agreement.

b. Portillo shall serve as the City Manager of the City in accordance with the powers, duties, and responsibilities set forth in Title 1, Chapter 6 of the City's Municipal Code and California law. Portillo shall perform the functions and duties specified under the laws of the State of California; the City's Municipal Code; the Ordinances and Resolutions of the City; and such other duties and functions as the City Council may from time-to-time assign.

c. Portillo agrees to devote sufficient time, ability, and attention to the City's business. As an exempt employee, Portillo shall not receive overtime or extra compensation for work performed outside of normal business hours.

d. Portillo shall be responsible to the City Council for the proper administration of all affairs of the City. Portillo shall administer and enforce policies established by the City Council, and promulgate rules and regulations as necessary to implement City Council policies.

e. Portillo shall provide a written summary report to the City Council, at least once monthly, to inform them of the major current activities of the City. The report need not include details or information regarding items that are included or reported on a current City Council meeting agenda.

5. Termination of Employment and Severance:

a. Portillo may terminate this Agreement and her employment with the City with or without cause, by giving the City sixty (60) days written notice in advance of termination. During the notice period, all the rights and obligations of the parties under this Agreement shall remain in full force and effect. The City shall not be obligated to make any severance payment or provide health care coverage, pursuant to Section 5(c) and 5(d) of this Agreement, if Portillo terminates this Agreement or resigns from her position as City Manager.

b. The City Council may terminate this Agreement and Portillo's employment with the City with or without cause at any time, in accordance with Title 1, Chapter 6 of the City's Municipal Code or any successor Municipal Code provisions in effect at the time of such termination. Portillo shall have a right to a hearing before the City Council as provided for under Section 1-6-8 of the City's Municipal Code. In addition, because of the political volatility both historically and currently, Portillo shall receive an additional six (6) months' notice prior to the time period set forth in Title 1, Chapter 6, or any successor code provisions.

c. In the event City terminates Portillo's employment without cause, Portillo shall be entitled to severance pay of a lump sum payment equal to six (6) months base salary. This severance is subject to the restrictions set forth in Government Code section 53260 that the maximum amount of severance pay that Portillo may receive shall not exceed an amount equal to the monthly base salary of the City Manager multiplied by the number of months left on the unexpired term of this

Agreement. At no time shall the City be responsible for paying more than six (6) months base salary for severance under this Agreement.

d. Severance pay under Section 5(c) of this Agreement shall be conditioned upon Portillo signing a waiver and release agreement forever releasing and waiving any and all claims in a form acceptable to the City. Portillo shall receive the severance payment under Section 5(c) in a lump sum payment, minus all applicable deductions, fifteen (15) business days after execution of the waiver and release agreement. Portillo shall not receive any severance under this Agreement if such a waiver and release agreement is not executed by the parties. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by Portillo from the City shall be fully reimbursed to the City if Portillo is convicted of a crime involving an abuse of his/her office or position while employed by the City.

e. Portillo shall receive payment for all accrued unused vacation at the time of his/her separation from employment.

f. If Portillo is terminated "for cause," the City shall not owe any severance under this Agreement. Termination "for cause" may be for the following:

- (i) Theft of City property;
- (ii) Insubordination;
- (iii) Conviction of a felony or misdemeanor relating to Portillo's fitness to perform assigned duties;
- (iv) Improper use of City funds;
- (v) Unauthorized use of City property;
- (vi) Willful misconduct or malfeasance;
- (vii) Any act of moral turpitude;
- (viii) Other failure of good behavior, either during or outside of employment, such that Portillo's conduct causes discredit to the City;
- (ix) Upon the death of Portillo; and
- (x) Permanent disability of Portillo, or Portillo becoming otherwise unable to perform the duties of City Manager, by reason of sickness, accident, illness, injury, mental incapacity or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves.

g. In the event the City terminates Portillo without cause, the City and Portillo agree that neither party shall make any written or oral statements to members of the public or the press concerning Portillo's termination except in the form of a joint press release which is mutually agreeable to both parties. The joint press release shall not contain any text or information that would be disparaging to either party. The parties further agree that, if they are unable to mutually agree on the contents of a joint press release within seventy-two (72) hours after notice of termination, the City may state solely that Portillo is no longer employed by the City.

h. Notwithstanding Title 1, Chapter 6, removal of Portillo by the City shall be effected only by a 4-1 vote of the whole City Council as then constituted, convened in a regular Council meeting. However, Portillo shall not be removed from the position of City Manager without

cause during or within a period of ninety (90) days succeeding any general municipal election held in the City at which election a member of the City Council is elected; the purpose of this provision is to allow any newly elected member of the City Council, or a reorganized City Council, to observe the actions and ability of Portillo in the performance of the powers and duties as City Manager.

6. Compensation and Benefits:

a. Portillo shall be paid an annual base salary of One Hundred Eighty-Four Thousand Six Hundred Twenty Dollars (\$184,620).

b. The City Council may review Portillo's performance and salary throughout the term of this Agreement pursuant to the provisions of Section 13 of this Agreement. The City Council may, from time to time, grant merit increases in Portillo's base salary as follows: if after a performance evaluation the City Council concludes that Portillo's performance warrants an adjustment for merit, the City Council may grant a merit adjustment in an amount determined by the City Council, to be effective on a date determined by the City Council. Such merit adjustment may be in the form of lump sum payments, adjustments to the base salary or any other form determined by the City Council. All merit increases shall be in the sole discretion of the City Council. Any increases in compensation shall not be automatically linked to any bargaining group.

c. In addition to the compensation provided in Section 6(a) above, the City agrees to provide the following to Portillo in consideration for the services provided pursuant to this Agreement:

(i) CalPERS Contribution: Portillo will be treated as a "Classic Member", and shall be eligible for California Public Employees' Retirement System ("CalPERS") retirement benefits upon the same terms as those benefits provided for City employees covered by the Local Miscellaneous Members Group classification for purposes of CalPERS (non-sworn employees). Portillo shall be responsible for the employee contribution required by all non-safety department heads.

(ii) Other Retirement Benefit: City agrees to deposit five thousand dollars (\$5,000) annually into Portillo's International City Management Association Retirement Corporation ("**ICMARC**") Section 401 Money Purchase Plan or IRC Section 457 deferred compensation plan, or some other alternative retirement plan chosen by Portillo as permitted by law. Portillo may contribute additional amounts from his/her base salary to the retirement program. Vesting will be and remain at 100 percent (100%) from date of employment, and her ownership in said plan and program assets shall survive the termination of this Agreement and termination of employment with the City. Portillo may elect to take any or all such payments by City as taxable salary during any calendar year, with such election to be made before January 1 of each year.

(iii) Health Benefits: Portillo shall receive the same medical, dental and vision insurance, and in lieu options afforded to all non-safety department heads. In case there is a difference between benefits received by non-safety department heads, Portillo will receive the higher benefit.

(iv) Vacation Leave: Portillo shall accrue vacation as follows:

Year 1-2:	20 days
Years 3- and beyond:	25 days

Portillo shall accrue vacation leave as set forth in this Section and as normally accrued by department heads.

(v) Administrative Leave: Portillo shall accrue administrative leave at the same rate and in the same manner as all non-safety department heads. If there are differences in benefits received by non-safety department heads, Portillo shall receive the higher benefit afforded to other non-safety department heads.

(vi) Life Insurance: City shall provide Portillo with Life Insurance Coverage in the amount of Five Hundred Thousand Dollars (\$500,000) plus the option to participate in an optional Life Insurance Program.

(vii) Other Benefits: It is the intent of this Agreement that Portillo receive the same basic benefits afforded to all non-safety department heads except as modified herein. Such other benefits as would normally accrue to members of this group shall be received by City Manager as well, whether set forth herein or not. If there are differences in benefits received by non-safety department heads, Portillo shall receive the higher benefit afforded to other non-safety department heads. Portillo understands and agrees that the City makes no assurances regarding the taxability of benefits, as such issues are subject to the Internal Revenue Code and related laws.

7. Automobile:

Portillo shall be provided with a monthly automobile allowance in the sum of Four Hundred Dollars (\$400). Any automobile(s) used by Portillo to provide services under this Agreement shall be insured by Portillo in the amount of \$100,000/\$300,000 (PL/PD), and \$50,000 property damage. Portillo shall provide proof of insurance to the City, and said policy of insurance shall state that it cannot be canceled without thirty (30) days' notice being provided to the City. Portillo will use his/her vehicle in commuting to work and in the performance of her employment responsibilities within the County of Merced. For trips associated with the performance of his/her employment outside of the County of Merced, Portillo shall be allowed to use a City vehicle. If Portillo uses her own vehicle for trips associated with the performance of his/her employment outside of the County of Merced, Portillo will be afforded the opportunity to submit for mileage reimbursement at the current Internal Revenue Service approved rate. For purposes of this Agreement, "to and from home" shall not be considered in the "performance of her employment outside of the County of Merced" eligible for mileage reimbursement.

8. Phone – Provided by the City:

Portillo shall be provided with a City-owned phone to use for City business.

9. Other Employment:

Any additional employment requires City Council approval.

10. Indemnification:

The City shall defend, hold harmless and indemnify Portillo against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise arising out of an alleged act of omission occurring in the performance of Portillo's duties in accordance with the provisions of California Government Code section 825. The City shall provide a defense in accordance with Government Code section 995. The City may decline to defend and/or indemnify Portillo only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom. In the event the City provides funds for legal criminal defense pursuant to this Section, Portillo shall reimburse City for such legal criminal defense funds if Portillo is convicted of a crime involving an abuse of office or position, as provided by California Government Code sections 53243-53243.4.

11. Notices:

Notices pursuant to this Agreement shall be in writing and served by mailing via the United States Postal Service, certified signature postage or express mail, addressed as follows:

- a. The City:
Mayor and City Council
City of Livingston
1416 C Street
Livingston, California 95334

- b. Portillo:
1416 C Street
Livingston, California 95334

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of mailing of such written notice, postage prepaid, with the United States Postal Service.

12. Bonding:

The City shall bear the full cost of any fidelity or other bond required under any law or ordinance.

13. Performance Evaluations:

The City Council will review and evaluate the performance of Portillo at least once every year. The City Council shall consider adjusting Portillo' salary annually. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of Portillo's performance in the future. Portillo will timely cause to be placed on the City Council agenda each year or as otherwise directed by the City Council, a "closed session" for the purpose of her performance evaluation. Failure of the City to schedule this goal setting session shall not constitute a material breach of this Agreement.

14. Professional Development:

The City agrees to pay the professional dues, subscriptions, travel and other business expenses of Portillo reasonably necessary for his continued and full participation in national, regional and local associations, professional organizations, government groups and committees thereof for the good of the City and desirable for continued professional growth and advancement, subject to the approval of the City Council. Annual membership fees to City Manager organizations, approved by the City Council, shall be paid for by the City. The City agrees to pay the professional memberships, city and member dues and subscriptions on behalf of Portillo to the International City Management Association (“**ICMA**”) and League of California Cities (“**LOCC**”).

15. Miscellaneous:

a. Pursuant to Government Code sections 53243, 53243.1, and 53243.2, which became effective on January 1, 2012, if City Manager is convicted of a crime involving an abuse of his/her office or position, all of the following shall apply: 1) if Portillo is provided with administrative leave pay pending an investigation City Manager shall be required to fully reimburse City such amounts paid; 2) if City pays for the criminal legal defense of City Manager which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense, City Manager shall be required to fully reimburse City such amounts paid; and 3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. For purposes of this Section, abuse of office or position means either: 1) an abuse of public authority including waste fraud and violation of the law under color of authority; or 2) a crime against public justice including, but not limited to, a crime described in Title 7 commencing with Section 92 of Part 1 of the Penal Code or as specifically defined under separate provisions of California statute.

b. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.

c. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

d. This Agreement shall be governed by the laws of the State of California.

e. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.

f. This Agreement may be executed in counterparts containing original signatures.

***[Signatures to Follow on Next
Page]***

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its Deputy City Clerk, and Portillo has signed and executed this Agreement, on the day and year written below.

PORTILLO:

DATED: _____

Vanessa Portillo, CITY MANAGER

CITY:

DATED: _____

Juan Aguilar, Jr., MAYOR

ATTEST:

Monica Cisneros, DEPUTY CITY CLERK

APPROVED AS TO FORM:

Tom Hallinan, CITY ATTORNEY

3690034.2