



CITY *of* CLOVIS

AGENDA • CITY COUNCIL MEETING

Council Chamber, 1033 Fifth Street, Clovis, CA 93612 (559) 324-2060
www.cityofclovis.com

September 05, 2023

6:00 PM

Council Chamber

In compliance with the Americans with Disabilities Act, if you need special assistance to access the City Council Chamber to participate at this meeting, please contact the City Clerk or General Services Director at (559) 324-2060 (TTY – 711). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Council Chamber.

The Clovis City Council meetings are open to the public at the physical address listed above. There are numerous ways to participate in the City Council meetings: you are able to attend in person; you may submit written comments as described below; you may participate by calling in by phone (see “Verbal Comments” below); and you may view the meeting which is webcast and accessed at www.cityofclovis.com/agendas.

Written Comments

- Members of the public are encouraged to submit written comments at: www.cityofclovis.com/agendas at least two (2) hours before the meeting (4:00 p.m.). You will be prompted to provide:

- Council Meeting Date
- Item Number
- Name
- Email
- Comment



- Please submit a separate form for each item you are commenting on.
- A copy of your written comment will be provided to the City Council noting the item number. If you wish to make a verbal comment, please see instructions below.
- Please be aware that any written comments received that do not specify a particular agenda item will be marked for the general public comment portion of the agenda.
- If a written comment is received after 4:00 p.m. on the day of the meeting, efforts will be made to provide the comment to the City Council during the meeting. However, staff cannot guarantee that written comments received after 4:00 p.m. will be provided to City Council during the meeting. All written comments received prior to the end of the meeting will be made part of the record of proceedings.

Verbal Comments

- If you wish to speak to the Council on an item by telephone, you should contact the City Clerk at (559) 324-2060 no later than 4:00 p.m. the day of the meeting.
- You will be asked to provide your name, phone number, and your email. You will be emailed instructions to log into Webex to participate in the meeting. Staff recommends participants log into the Webex at 5:30 p.m. the day of the meeting to perform an audio and mic check.
- All callers will be placed on mute, and at the appropriate time for your comment your microphone will be unmuted.
- In order for everyone to be heard, please limit your comments to 5 minutes or less, or 10 minutes per topic

Webex Participation

- Reasonable efforts will be made to allow written and verbal comment from a participant communicating with the host of the virtual meeting. To do so, a participant will need to chat with the host and request to make a written or verbal comment. The host will make reasonable efforts to make written and verbal comments available to the City Council. Due to the new untested format of these meetings, the City cannot guarantee that these written and verbal comments initiated via chat will occur. Participants wanting to make a verbal comment via call will need to ensure that they accessed the WebEx meeting with audio and microphone transmission capabilities.

CALL TO ORDER

FLAG SALUTE - Councilmember Pearce

ROLL CALL

PRESENTATIONS/PROCLAMATIONS

1. Presentation of Certificates Recognizing Students for Participating in the American Legion Boys and Girls State Program.
- [2.](#) Presentation of Proclamation Declaring September 2023 as National Service Dog Month.

PUBLIC COMMENTS - This is an opportunity for the members of the public to address the City Council on any matter within the City Council's jurisdiction that is not listed on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less, or 10 minutes per topic. Anyone wishing to be placed on the Agenda for a specific topic should contact the City Manager's office and submit correspondence at least 10 days before the desired date of appearance.

ORDINANCES AND RESOLUTIONS - With respect to the approval of resolutions and ordinances, the reading of the title shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Councilmember that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

CONSENT CALENDAR - Items considered routine in nature are to be placed upon the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Councilmember requests individual consideration. A Councilmember's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed. Motions in favor of adoption of the Consent Calendar are deemed to include a motion to waive the reading of any ordinance or resolution on the Consent Calendar. For adoption of ordinances, only those that have received a unanimous vote upon introduction are considered Consent items.

- [3.](#) Administration - Approval - Minutes from the August 21, 2023, Council Meeting.
- [4.](#) Administration - Approval – Award the Request for Proposals and approve the purchase of Cisco Networking and Security equipment from ConvergeOne in the amount of \$72,021.55.
- [5.](#) Administration – Approval – FY 2023-24 Agreement between the City of Clovis and the Economic Development Corporation Serving Fresno County for services up to an amount of \$50,000.
- [6.](#) Administration – Approval – Waive Formal Bidding Requirements and Authorize the City Manager to Enter into an Agreement with Kosmont Companies for \$50,000 to Conduct an Analysis of Development Impact Fee Program.
- [7.](#) Administration – Approval – Res. 23-____, Amending the 2023-2024 Planning and Development Services Budget, and Authorize the City Manager to enter into an Agreement with the Clovis Rodeo Association for City use of Rodeo Grounds Facilities.
- [8.](#) General Services – Approval - Claim Rejection of the General Liability Claim on behalf of Brooklyn Sykes, Giani Christensen, and Tiffany Shoemaker.
- [9.](#) General Services – Approval – Res. 23-____, Authorizing the City Manager to Execute an Agreement for Older Americans Act Funding for Title III C-1 Nutrition Services Through the Fresno-Madera Area Agency on Aging (FMAAA); and Approval Res. 23-____, Amending the FY 2023-2024 General Services Department Budget to Reflect \$41,000.00 in Grant Funding for the Clovis Senior Activity Center Awarded by the Fresno-Madera Area Agency on Aging.
- [10.](#) Planning and Development Services – Approval – Final Acceptance for CIP 17-21 Well 35 Drilling and Development.
- [11.](#) Planning and Development Services – Approval – Amend the 2023-2024 Community Investment Program Budget for General Government Facilities, addition of Loma Vista Police Substation in the amount of \$700,000.
- [12.](#) Planning and Development Services – Approval – Bid Award for CIP 21-20 Sierra Avenue Street Improvements; and Authorize the City Manager to Execute the Contract on behalf of the City with Dave Christian Construction in the amount of \$1,190,049.00.
- [13.](#) Planning and Development Services – Approval – Final Acceptance for Final Map for Tract 6164, located southwest area of Dakota Avenue and Leonard Avenue (DYP 6164, LP a California Limited Partnership (De Young Properties)).
- [14.](#) Public Utilities – Approval – Award a Contract to Karbonous, Inc. for Maintenance Work Consisting of Purchasing and Replacing Granular Activated Carbon (GAC) at Well 21 and Well 28 in the Amount of \$135,842.40.
- [15.](#) Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize the Purchase of a Police Department Aerial Bucket Truck from Altec Industries, Inc. Using the Sourcwell Purchasing Contract in the Amount of \$186,064.

16. Public Utilities – Approval – Res. 23-____, Adopting an Integrated Pest Management Policy.
17. Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize the City Manager to Enter into a Contract with Golden Bell Products, Inc. for Insect Control in Sanitary Sewer Manholes in the Amount of \$188,421.25.

ADMINISTRATIVE ITEMS - Administrative Items are matters on the regular City Council Agenda other than Public Hearings.

18. Consider various amendments to the City of Clovis Municipal Code related to Code Enforcement:
- a. Consider Adoption - Ord. 23-06, Amending section 5.22.07 of the City of Clovis municipal code relating to the marijuana penalties and enforcement. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)
 - b. Consider Adoption - Ord. 23-07, Amending section 6.3.13, of chapter 6.3, of title 6, of the City of Clovis municipal code relating to the unlawful dumping of garbage. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)
 - c. Consider Adoption - Ord. 23-08, Adding section 5.27.512 to title 5 of the City of Clovis municipal code relating to the storing, maintaining, or placing of personal property in the public right-of-way. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)
 - d. Consider Adoption - Ord. 23-09, Amending section 5.10.06 of the City of Clovis municipal code relating to the application for a massage establishment permit or out-call massage business permit. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)
 - e. Consider Adoption - Ord. 23-10, Amending section 6.5.102, of chapter 6.5, of title 6, of the City of Clovis municipal code relating to the applications for water service. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)

Staff: Karey Cha, City Clerk

Recommendation: Adopt

19. Receive and File – Annual Update on California Open Governance Laws – Brown Act, Public Records Act, Ethics.

Staff: Scott Cross, City Attorney

Recommendation: Receive and File

COUNCIL ITEMS

20. Consider Approval – Letter to Fresno County Regarding Library Concerns from the Community.

Staff: John Holt, City Manager

Recommendation: Approve

CITY MANAGER COMMENTS

COUNCIL COMMENTS

CLOSED SESSION - A “closed door” (not public) City Council meeting, allowed by State law, for consideration of pending legal matters and certain matters related to personnel and real estate transactions.

21. Government Code Section 54956.9(d)(1)
CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Case Name: Desiree Martinez v. City of Clovis, et al., Case No. F082914
22. Government Code Section 54956.9(d)(2)
CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation
One potential case

ADJOURNMENT

FUTURE MEETINGS

Regular City Council Meetings are held at 6:00 P.M. in the Council Chamber. The following are future meeting dates:

September 11, 2023 (Mon.)
September 18, 2023 (Mon.)
October 2, 2023 (Mon.)
October 9, 2023 (Mon.)
October 16, 2023 (Mon.)

CITY of CLOVIS

Proclamation

Declaring September as National Service Dog Month

WHEREAS, We believe in the joyful, transformative power of the human-canine bond and inclusivity of all citizens; and

WHEREAS, In the United States, 64 million adults and children have a disability and only 16,000 service dogs from accredited training programs exist nationwide and the need is growing; and

WHEREAS, Canine Companions is a nonprofit organization that enhances the lives of people with disabilities by providing expertly-trained service dogs and ongoing support to ensure quality partnerships; and

WHEREAS, Canine Companions and their service dogs empower people with disabilities to lead life with greater independence, by providing best-in-class training, ongoing follow up services and a deeply committed community of support; and

WHEREAS, National Service Dog Month aims to educate our community about the benefits of service dogs and the laws protecting them; and

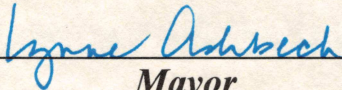
WHEREAS, The City of Clovis continues to work toward becoming an inclusive community in which all citizens, and their service dogs, are embraced.

NOW, THEREFORE, BE IT RESOLVED, that the Clovis City Council, on behalf of the citizens of Clovis, does declare September as

NATIONAL SERVICE DOG MONTH

IN WITNESS THEREOF, I hereunto set my hand and cause the official seal of the City of Clovis to be affixed this 5th day of September 2023.




Mayor

CLOVIS CITY COUNCIL MEETING

August 21, 2023

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Ashbeck at 6:01.
Flag Salute led by Councilmember Mouanoutoua

Roll Call: Present: Councilmembers Mouanoutoua, Pearce, Mayor Ashbeck
 Absent: Councilmembers Basgall, Bessinger

PUBLIC COMMENTS – 6:02

None.

CONSENT CALENDAR – 6:04

Motion by Councilmember Mouanoutoua, seconded by Councilmember Pearce, that the items on the Consent Calendar be approved. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

1. Administration - Approved - Minutes from the August 7, 2023, Council Meeting.
2. Administration – Approved – Amending the Community Development Block Grant – Coronavirus (CDBG-CV) funded Utilities Assistance Program, for low-income residents, to allow for up to an additional five months of assistance subsequent to any initial assistance provided, as allowed by federal regulations.
3. Finance- Approved – **Res. 23-71**, Approving the submittal of the 2023-2024 Transportation Funding Claim to the Fresno Council of Governments.
4. General Services - Approved - Selection of Janitorial Supplies Vendor Imperial Bag & Paper Co. Doing Business As Imperial Dade, and Authorize the City Manager to Execute the Agreement.
5. General Services – Approved - Claim Rejection of the General Liability Claim for Sammy Olague.
6. General Services – Approved – **Res. 23-72**, Approving a Side Letter Agreement with Clovis Public Works Employees Association to Clarify Paid Holidays Eligible for Cash Out within the CPWEA MOU; and Authorizing the City Manager to Execute the Agreement.
7. General Services – Approved – **Res. 23-73**, Authorizing the Execution of the Certifications and Assurances for the FY 2023-24 California State Transit Assistance State of Good Repair Program.
8. Planning and Development Services – Approved – **Res. 23-74**, A resolution supporting and implementing the “Timely Use of Funding” as required by Assembly Bill 1012 for Candidates 2023-24 Federal Transportation Act, FAST Act Projects.
9. Planning and Development Services – Approved – Final Acceptance for CIP 23-01 Rubberized Cape Seal 2023.
10. Planning and Development Services – Approved – Final Acceptance for CIP 21-13 Alley Improvements.

11. Planning and Development Services – Approved – Final Acceptance for Final Map for Tract 6377, located at the southeast area of Leonard Avenue and Shaw Avenue (DYP 6377, LP (De Young Properties)).
12. Planning and Development Services – Approved – **Res. 23-75**, a request authorizing the City Manager to execute an amendment to a previously executed consultant agreement between the City of Clovis and Ascent Environmental, Inc. for the preparation of the Housing Element update and related services.
13. Police - Approved - **Res. 23-76**, Authorizing the Police Chief and the Police Department to execute the 2023-2024 Department of Alcoholic Beverage Control Alcohol Policing Partnership grant agreement and amend the Police Department budget to reflect the award of \$60,000.00.

PUBLIC HEARINGS – 6:05

- 6:05 ITEM 14 - APPROVED VARIOUS AMENDMENTS TO THE CITY OF CLOVIS MUNICIPAL CODE RELATED TO CODE ENFORCEMENT, AND RECEIVE UPDATE ON CITY OF CLOVIS CODE ENFORCEMENT TEAM:

Dave Raul, resident, shared concerns regarding adding section 5.27.512 (personal property in public right-of-way) as a backdoor measure to address homelessness.

14A. APPROVED INTRODUCTION - **ORD. 23-06**, AMENDING SECTION 5.22.07 OF THE CITY OF CLOVIS MUNICIPAL CODE RELATING TO THE MARIJUANA PENALTIES AND ENFORCEMENT.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

14B. APPROVED INTRODUCTION - **ORD. 23-07**, AMENDING SECTION 6.3.13, OF CHAPTER 6.3, OF TITLE 6, OF THE CITY OF CLOVIS MUNICIPAL CODE RELATING TO THE UNLAWFUL DUMPING OF GARBAGE.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

C. APPROVED INTRODUCTION - **ORD. 23-08**, ADDING SECTION 5.27.512 TO TITLE 5 OF THE CITY OF CLOVIS MUNICIPAL CODE RELATING TO THE STORING, MAINTAINING, OR PLACING OF PERSONAL PROPERTY IN THE PUBLIC RIGHT-OF-WAY.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

D. APPROVED INTRODUCTION - **ORD. 23-09**, AMENDING SECTION 5.10.06 OF THE CITY OF CLOVIS MUNICIPAL CODE RELATING TO THE APPLICATION FOR A MASSAGE ESTABLISHMENT PERMIT OR OUT-CALL MASSAGE BUSINESS PERMIT.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

E. APPROVED INTRODUCTION - **ORD. 23-10**, AMENDING SECTION 6.5.102, OF CHAPTER 6.5, OF TITLE 6, OF THE CITY OF CLOVIS MUNICIPAL CODE RELATING TO THE APPLICATIONS FOR WATER SERVICE.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

ADMINISTRATIVE ITEMS – 6:37

6:37 ITEM 15 - APPROVED - **RES. 23-77**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS AUTHORIZING THE ISSUANCE AND SALE OF WATER REVENUE REFUNDING BONDS AND APPROVING DOCUMENTS AND OFFICIAL ACTIONS RELATING TO THE REFINANCING OF THE 2013 WATER REVENUE BONDS.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

6:46 ITEM 16 - APPROVED – CONSIDER AN ASSESSMENT INCREASE ELECTION IN LANDSCAPE MAINTENANCE DISTRICT NO. 1, BENEFIT ZONES 2 AND 5.

Dave Raul, resident, spoke in support of putting up informational signs at parks to educate residents.

Motion for approval by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

7:09 ITEM 17 - APPROVED - PRESENT AND DISCUSS THE GENERAL PLAN UPDATE STRATEGY REPORT AND AUTHORIZE STAFF TO INITIATE A COMPREHENSIVE GENERAL PLAN UPDATE.

Dirben Lurin, Ellis Family Representative, spoke in support of initiating a general plan update.

Jeff Harris, Wilson Homes Representative, spoke in support of initiating a general plan update and encouraged the City Council to include implementation measures in the next general plan. In addition, he encouraged the City Council to limit the timeframe of the general plan update and asked that Councilmembers and Planning Commissioners not be on the General Plan Advisory Committee.

Brent Berdine, resident, shared concerns regarding inclusivity of residents as stakeholders.

Paul Hinkle, resident, encouraged the City Council to include members of the ADA and senior communities on the general plan update process.

Motion to authorize staff to initiate the general plan update by Councilmember Mouanoutoua, seconded by Councilmember Pearce. Motion carried 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent.

CITY MANAGER COMMENTS – 8:12

COUNCIL COMMENTS – 8:12

Mayor Ashbeck adjourned the meeting of the Council to September 5, 2023

Meeting adjourned: 8:14 p.m.

Mayor

City Clerk



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 5, 2023

SUBJECT: Administration - Approval – Award the Request for Proposals and approve the purchase of Cisco Networking and Security equipment from ConvergeOne in the amount of \$72,021.55.

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to award the Request for Proposals and approve the purchase of Cisco Networking and Security equipment from ConvergeOne in the amount of \$72,021.55.

EXECUTIVE SUMMARY

In November 2022, Council approved the purchase of network, electrical and mechanical equipment (and related services) to enhance the reliability and resiliency of the City's server rooms. Staff has already made significant progress in upgrading server room's the battery backup power and air conditioning units. This network and security equipment is the next phase of the overall resiliency project implementation. Staff went out with an RFP and received ten (10) responses. ConvergeOne provided the most cost effective and responsive proposal.

BACKGROUND

Last summer, the Fresno/Clovis area set a record with 60 plus days of 100F degrees or more, including a few days with temperatures over 110 degrees. At one point, there was a power outage that lasted for several hours that caused the network and data systems to experience some downtime. Following the outage, staff did a comprehensive review of the issues, and in November 2022, Council approved the purchase of the equipment and services (network, security, electrical and mechanical) needed to enhance the reliability and resiliency of the campus server rooms.

Staff has been working on implementing the server room enhancements and has made significant progress. The battery backup units have been upgraded and can now sustain a

complete power outage of approximately four hours. Additionally, the server room's air conditioning units have been replaced which provides the necessary redundancy and reliability.

For the network enhancements, staff has been working with a consultant to redesign the system for secure and seamless integration, offsite redundancy and to ensure our Public Safety services (Dispatch, Fire and Police MDCs) would be able to continue to operate if the primary sites are down due to a power outage or other unforeseen circumstance.

On August 1, 2023, staff went out with a Request For Proposals (RFP) for the network and security equipment needed for the redesigned system using the City's Online Bidding system. A total of 384 technology vendors were notified and ten (10) proposals were received. In an 'apples to apples' comparison of the proposals, the pricing for the equipment, tax and shipping was as follows:

VENDOR NAME	TOTAL
ConvergeOne	\$72,021.55
itech devices, INC	\$79,341.11
Zones, LLC	\$82,920.64
Questivity, Inc	\$83,673.85
Axelliant, LLC	\$85,961.92
Southern Computer Warehouse, Inc.	\$88,717.15
Sunflower Lab, LLC	\$89,528.76
Key Code Media	\$100,461.92
Hospitality Business Network Solutions	\$100,792.75
Howard Industries, Inc.	\$115,899.00

Staff is recommending ConvergeOne as they submitted the lowest-priced, responsible proposal. They are a certified Cisco Gold Partner and have met all the requirements of RFP.

FISCAL IMPACT

The total cost for the Cisco network and security equipment, tax, and shipping, is \$72,021.55. Funds have been allocated in the IT Division budget.

REASON FOR RECOMMENDATION

The equipment and services are needed to increase the stability and resiliency of the City's critical network infrastructure, and to better protect operations due from electrical grid problems, brownouts, and other unforeseen outages.

ACTIONS FOLLOWING APPROVAL

The network and security equipment will be ordered; upon receipt, staff will work with the consultant to configure and install this equipment to provide offsite redundancy / resiliency to the City's network systems and services.

Prepared by: Jesse Velez, I.T. Deputy Director

Reviewed by: City Manager *AM*



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 5, 2023

SUBJECT: Administration – Approval – FY 2023-24 Agreement between the City of Clovis and the Economic Development Corporation Serving Fresno County for services up to an amount of \$50,000.

ATTACHMENTS: 1. 2023-24 Agreement between the City of Clovis and the Economic Development Corporation Serving Fresno County

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

Approve and authorize the City Manager to execute the fiscal year 2023-24 Agreement between the City of Clovis and the Economic Development Corporation Serving Fresno County (EDC) up to an amount of \$50,000.

EXECUTIVE SUMMARY

The attached agreement is between the City of Clovis and the Economic Development Corporation serving Fresno County up to an amount of \$50,000. The agreement outlines activities and responsibilities that the EDC will provide for the funding.

BACKGROUND

The Agreement continues the formalized relationship between the City and the EDC. The EDC will assist in promoting economic growth in the City of Clovis by providing informational resources and technical assistance to retain and expand existing Clovis businesses, assist in the development of marketing materials to attract new investment to the City, assist in marketing the City's industrial/commercial properties, including the Research and Technology Park.

Attraction efforts will include data analysis to determine likely industries and subsequent businesses that are ideal for Clovis to focus on, general marketing efforts, trade show attendance if feasible, outreach to brokers, and an incentive for site tours completed for businesses looking to locate in Clovis. Retention efforts will include utilizing access to economic data the EDC has

to ensure Clovis staff is focusing on critical businesses in retention efforts and the EDC acting as a business resource expert. This structure allows for the City and the EDC to leverage their expertise and increase the ability of economic development efforts in Clovis.

The EDC also agrees to support the City of Clovis in developing the Five Year Comprehensive Economic Development Strategy plan update.

To facilitate continued close coordination between the City and EDC, the City of Clovis Assistant City Manager sits on the Board of Directors and the Executive Committee of the EDC. The City's Community and Economic Development staff maintains a close working relationship with the EDC's Executive Director and staff.

FISCAL IMPACT

The City of Clovis will pay the EDC up to \$50,000, including performance incentives, in the 2023-24 fiscal year in four quarterly payments contingent on submission of a quarterly report of activities to the City Council. These funds are included in the 2023-24 City budget.

REASON FOR RECOMMENDATION

This agreement is consistent with the adopted budget, policies, goals, and objectives of the City Council. As a regional economic development organization, it is appropriate that the City collaborates with the EDC on the implementation of goals and objectives to facilitate the creation of jobs for Clovis and the region.

Approval of this agreement will allow the City to continue its coordinated approach to enhancing the City's economy and job creation efforts with the County of Fresno and other cities within the County.

ACTIONS FOLLOWING APPROVAL

After approval, the City Manager will execute the agreement; and the Community and Economic Development staff will administer the agreement.

Prepared by: Chad McCollum, Economic Development, Housing and Communications Director

Reviewed by: City Manager AM

**AGREEMENT BETWEEN THE CITY OF CLOVIS AND THE
ECONOMIC DEVELOPMENT CORPORATION SERVING FRESNO COUNTY
FOR FISCAL YEAR 2023-2024**

AGENDA ITEM NO. 5.

WHEREAS, the City Council of the City of Clovis (City) is committed to a balanced and diversified economy as one of its most important priorities to ensure the future well-being of the citizens of Clovis; and

WHEREAS, the City has invested considerable resources to encourage a location for new and expanding businesses and industries and to ensure the economic vitality of commercial areas; and

WHEREAS, the Economic Development Corporation Serving Fresno County (EDC) continues to maintain regional, national, and international marketing and promotional efforts to attract the location and expansion of businesses and industries in all of the communities within Fresno County; and

WHEREAS, the State of California (State) has designated the EDC as its regional contact and referral point for businesses and industries that contact the State while seeking a location for new or expanded facilities; and

WHEREAS, the City desires to secure such services, and allocates funds to the EDC for purposes of aligning additional EDC resources and staff support to assist in implementing and administering certain local economic development activities such as advocacy, marketing and promotion, and technical support for the City by the EDC toward business attraction goals to create ongoing opportunities for the City; and

WHEREAS, the City seeks to enhance its support of the EDC in order to utilize the unique position the EDC maintains within the business community, and to promote economic growth in the City.

NOW, THEREFORE, the City and the EDC agree as follows:

1. The EDC agrees to assist the City in promoting the economic growth in the City by providing the following services:
 - (a) Provide informational resources and technical assistance to retain and expand existing Clovis businesses.
 - (b) For the purpose of recruiting new businesses and industries to the City, provide information to industrial and office representatives.
 - (c) Assist in the development of marketing materials to attract new investment to the City.
 - (d) Assist in marketing the City's industrial/commercial properties, including the Research and Technology Park.
 - (e) Market the City to commercial and industrial brokers, developers, site selectors, and businesses.

- (f) Distribute City economic development materials.
 - (g) Assist the City in the implementation of the City's Economic Development Strategy and the Business Retention, Expansion and Attraction Program.
 - (h) Assist the City in preparing for, and conducting, proactive targeted outreach to companies identified in the Clovis Comparative Healthcare Analysis, or other business prospecting tools, if available.
 - (i) The Economic Development team will work towards fostering a closer working relationship with local business associations to enhance the accessibility of EDC's services to City employers. Level of partnership is dependent on willingness and capacity of local business associations to participate.
 - (j) Assist City points-of-contact in fully utilizing social media and online marketing tools to advance economic and community development efforts in the City.
 - (k) The EDC will inform the City of legislation important to the Economic and Community Development of the region and advocate on their behalf.
 - (l) In addition to periodic reports to the Economic Development Director and City Manager, submit quarterly status reports to the City Council, detailing the progress of the EDC and related activities.
 - (m) The EDC shall assist in identifying economic development projects and priorities on the City's behalf for inclusion in the County of Fresno's Comprehensive Economic Development Strategy (CEDS) for potential grant funding.
 - (n) The EDC agrees to provide a designated Economic Development Specialist as an EDC staff member to respond to City business attraction and expansion leads and to ensure City participation.
2. For performance of the services described in Section 1, paragraphs (a) through (p) and for measurable outcomes identified in Attachment A, the City agrees to pay the EDC the sum of \$40,000 to be paid in four (4) quarterly installments, at the end of each quarter, with the quarter commencing July 1, 2023. In addition to the services described in Section 1, the City agrees to pay the EDC ten thousand dollars (\$10,000) in four quarterly installments, at the end of each quarter, for focused outreach and project support for the City of Clovis' in developing the Five Year Comprehensive Economic Development Strategy plan update.
 3. It is understood and agreed that in the performance of this agreement the EDC is an independent contractor. The EDC shall take out and maintain Workers Compensation, State Disability, and other insurance coverage as required by law and shall in all other respects comply with applicable provisions of federal, state, and local laws, rules and regulations.

4. The EDC shall indemnify, hold harmless, and defend the City, its officers, agents, and employees, from all claims for money, damages, or other relief arising in any form from the performance of this agreement by the EDC, its officers, agents, or employees. The EDC shall take out and maintain for the full term of this agreement liability insurance providing protection for personal injury, wrongful death, and property damage; such insurance to be in amounts and issued by carriers acceptable to the City. The EDC shall provide the City with a Certificate of Insurance evidencing such coverage.
5. The funds provided EDC by the City pursuant to this agreement shall not be directly or indirectly used for any political purpose whatsoever. This prohibition includes, but is not limited to, campaigns, events, promotions, literature, lobbying or other activities for, against or on behalf of any state, local or federal legislation, issue, candidate(s) or action, whether partisan in nature or not.
6. As part of the annual financial audit of the books and records of the EDC by the EDC's independent auditor, the audit shall include tests for compliance with this Agreement. These tests shall be performed in conformance with generally accepted auditing standards. The auditor shall prepare a separate written report on the compliance with the provisions of this agreement. The City reserves the right to review, during normal business hours, the books and records of the EDC's expenditures which are related to the programs required by the provisions of this Agreement.

DATED: _____

CITY OF CLOVIS

BY: _____

John Holt, City Manager

ATTEST:

Karey Cha, City Clerk

APPROVED AS TO FORM:

City Attorney

DATED: _____

ECONOMIC DEVELOPMENT CORPORATION
SERVING FRESNO COUNTY

BY: _____

Lee Ann Eager, CEO

FY 23-24 Overview of Work Product	Deliverables	FY 2023 – 2024 Target Outcomes	
Economic Development Corporation Serving Fresno County Contract: \$40,000 Comprehensive Economic Development Strategy Phase 1: \$10,000 - Plan Participation and Outreach Staff: President & CEO Lee Ann Eager Chief Operating Officer Sherry Neil Vice President of Business Services Will Oliver	Business Retention: Staff to generate Top 50 Analysis with City input. Targeted businesses will be contacted by a variety of methods to educate Clovis businesses on available retention resources, such as utility rate reductions, rehiring incentives and low-cost emergency relief funding. - Conduct Analysis to determine Top 50 companies in Clovis that should be focused on for retention and expansion. New Business Recruitment: Facilitate information and conduct tours for company representatives not currently located in Clovis for the purpose of recruiting new businesses to the City of Clovis. Assist the City of Clovis in promoting future industrial areas and existing industrial sites to new clients. - Coordinate virtual and in-person site tours for the purpose of business attraction and expansion. - Create and update marketing materials. - Support in-person or virtual commercial and industrial broker events for the City of Clovis. - Communicate leads status during monthly EDC - City of Clovis meeting.	Top 50 targeted business analysis for expansion/retention	
		Respond to all City of Clovis business inquires and connect them to appropriate resources	
		Outreach and project support for 5 Year CEDS Update	
		2 Broker Events	
		40 new business leads	
		Economic Profile Update	

	Assist the City in preparing for, and conducting, proactive targeted outreach to companies identified in the Clovis Comparison Healthcare Analysis, or other business prospecting tools, if available. Comprehensive Economic Development Strategy Participation and Engagement Planning for the County of Fresno Comprehensive Economic Development Five Year Update is set to occur beginning in 2023. EDC will partner with the City in providing focused outreach and project support to ensure the City’s goals and objectives are included in the CEDS update.		
--	--	--	--



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 5, 2023

SUBJECT: Administration – Approval – Waive Formal Bidding Requirements and Authorize the City Manager to Enter into an Agreement with Kosmont Companies for \$50,000 to Conduct an Analysis of Development Impact Fee Program.

ATTACHMENTS: 1. Proposal

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to waive the City's formal bidding requirements and authorize the City Manager to enter into an agreement with Kosmont Companies to conduct an analysis of the City's Development Impact Fee Program.

EXECUTIVE SUMMARY

At the June 5, 2023, City Council Meeting, Council directed staff to review and analyze the City's Development Impact Fee Program. Staff developed a scope and sought bids from multiple consulting firms, only one responded with a proposal. Staff has reviewed the proposal, interviewed the consulting team, and checked references. Based on this review, staff recommends waiving the City's formal bidding requirements due to the lack of bids available for review and a highly qualified firm being available. The proposal (**Attachment 1**) includes analysis of the City's Development Impact Fee Program at an estimated cost of \$50,000. Funding is available in the 2023-2024 Fiscal Year's budget.

BACKGROUND

At the June 5, 2023, City Council Meeting, Council directed staff to review and analyze the City's Development Impact Fee Program. Staff developed a scope and sought bids from multiple consulting firms, only one responded with a proposal. In summary, the consultant was tasked with:

- Review how the City of Clovis calculates Development Impact Fees and how those fees are funded and financing mechanisms available.
- Provide an overview of industry best means to calculate fees and how they are funded elsewhere.
- Conduct staff, industry, and Council workshops on the findings.

Staff has reviewed the proposal, interviewed the consulting team, and checked references. Staff recommends waiving the City's formal bidding requirements due to the lack of bids available for review and the positive feedback gathered from the interview and reference checks. The proposal (**Attachment 1**) includes the analysis indicated above at an estimated cost of \$50,000. Funding is available in the 2023-2024 Fiscal Year's budget.

FISCAL IMPACT

Sufficient funds are included in the 2023-24 budget.

REASON FOR RECOMMENDATION

The contract amount is within the City Manager's purchasing authority, but the purchasing policy requires at least three bids. Due to the lack of three responses and a qualified bidder, staff is seeking a waiver of the purchasing policy. This will allow the analysis requested by City Council to be completed.

ACTIONS FOLLOWING APPROVAL

The City Manager will execute the agreement and the project will be commenced with a workshop being conducted for City Council to consider the report in approximately two months.

Prepared by: Andrew Haussler, Assistant City Manager

Reviewed by: City Manager AH



August 30, 2023

John Holt
City Manager
City of Clovis
1033 Fifth St
Clovis, CA 93626

Re: Proposal for Advisory Services – DIF and Infrastructure Funding Methodology

Dear Mr. Holt:

Kosmont & Associates, Inc. doing business as Kosmont Companies (“Consultant” or “Kosmont”) is pleased to present this proposal for Development Impact Fees (“DIF”) and Infrastructure Financing advisory services to the City of Clovis (“Client” or “City”).

Kosmont is a real estate and economic development services firm offering a full range of financial advisory, infrastructure finance, development feasibility and fiscal analysis for both the public and private sectors. Kosmont has extensive experience in DIF and public financing strategies, having worked with Mountain House Community Services District, who has been responsible for funding massive infrastructure improvements to facilitate greenfield development of over 6,000 homes.

Kosmont was founded in 1986 by CEO Larry J. Kosmont and has assisted hundreds of public agencies in their quest for successful economic development. What sets Kosmont apart is our understanding of how economics relates to project planning, as well as our understanding of both the public and private sectors. For more visit www.kosmont.com.

This proposal serves as an Agreement when executed and returned by Client to Kosmont.

I. BACKGROUND AND OBJECTIVE

The City has been unable to fully fund master infrastructure needed to facilitate growth. Accordingly, City Council desires an analysis of DIF and how they compare to other communities in order to determine the appropriate application and pricing factors as related to DIF, including level of competitiveness with other jurisdictions primarily in the Central Valley. As a result, City is seeking advisory services pertaining to the inventory and review of the range of DIF charged by the City (police, fire, parks, library, water, sewer, roads), in comparison to other similar/relevant jurisdictions. To accomplish this, Kosmont proposes the following Scope of Services.

II. SCOPE OF SERVICES

Approach to Tasks: The prospective assignment and consulting services that Kosmont will provide will be of a relatively limited scope and duration, and advisory in nature. Kosmont will be providing information, data, analysis and identifying potential alternatives on an advisory basis to the Client and jurisdictions, including their elected officials, appointed officials, and staff, which they can accept or reject by. None of Kosmont's staff will act in a capacity as an elected official, nor appointed official, nor as staff, nor as serving in a "designated" position.

Kosmont will conduct an objective unbiased analysis of the Tasks in order for the City to utilize the DIF information on a Citywide basis. The City acknowledges that the City and private sector development community may use the information included in the Final Report in subsequent discussions / negotiations about levels and methodology of said DIF and related matters.

Task 1: Review of Current Fee Structure and Due Diligence

Kosmont will review the City's existing Municipal Code relating to DIF and the Master Development Fee Schedule and spend ½ day interviewing City staff for the purposes of understanding how fees are computed, collected, and infrastructure investments are made.

Task 2: Review of Fee Structures / Housing Feasibility in Similar Jurisdictions

For similar fast-growing communities in California, Kosmont will gather home prices and land values and will review and analyze the methodology used by a number of similar jurisdictions' fee structures in Central Valley, Inland Empire and San Joaquin Valley area. Said review may include calculating fees for a hypothetical 40-acre housing project and a 10-acre shopping center for high-level comparative purposes.

Task 3: Alternative Financing Options

The financing of major infrastructure faces numerous challenges, such as need for large front-end investment, impact of inflation on costs and financial market uncertainty. Kosmont will provide an overview of how other communities fund infrastructure improvements and the lessons learned. This will include discussion of public-private financing tools that could potentially fill the gap between the DIF collected and actual costs of infrastructure development. Targeted tools may include, but not limited to, community facility districts ("CFD's"), tax increment financing ("TIF"), such as enhanced infrastructure financing districts ("EIFD"), and multiple state and/or federal grant programs with particular relevance to infrastructure funding.

Task 4: Development Feasibility / Draft Report

Kosmont will demonstrate how the DIF impacts development feasibility, home prices and land values, and compare how home sales prices have grown relative to DIF levels. Kosmont will present its findings in draft form for discussion with the City staff.

Task 5: Presentation / Final Report

Kosmont will make presentations regarding the analysis, findings and alternative approaches for consideration to the Building Industry Association and the City Council. Following the input received a Final Report will be provided to the City.

III. SCHEDULE AND REQUIRED DATA

Consultant is prepared to commence work upon receipt of executed Agreement and required data from the City. Task 4 deliverables are anticipated to be complete by November 8, 2023 (subject to execution of Agreement by City by September 6, 2023).

IV. COMPENSATION

Compensation for the Scope of Services is estimated at \$50,000 for professional services (hourly) fees at Consultant's billing rates as shown on Attachment A. Future increases in budget will require approval by Client in advance. Budget may be increased by Client at any time.

Consultant anticipates two rounds of Client comments and revisions on draft work product before Kosmont provides a final version of work product. If necessary, additional rounds of comments and revisions can be accommodated on an hourly basis.

Consultant's participation at any additional **publicly noticed** meeting other than Task 5, whether such participation is in person, digital, video and/or telephonic (*e.g., City Council, Planning Commission, other*), as requested by Client will be billed at the professional services fees as shown on Attachment A.

Services will be invoiced monthly at Consultant's standard billing rates, as shown on Attachment A. In addition to professional services (hourly) fees, invoices will include reimbursement for out-of-pocket expenses such as travel and mileage (provided that there shall be no overnight travel without the Client's prior approval and that mileage shall be reimbursed at the current IRS mileage reimbursement rate), professional printing, conference calls, and delivery charges for messenger and overnight packages at actual cost. Unless otherwise agreed to in advance, out-of-area travel, if any, requires advance funding of flights and hotel accommodations.

Consultant will also include in each invoice an administrative services fee to cover in-house copy, fax, telephone and postage costs equal to four percent (4.0%) of Consultant's monthly professional service fees incurred. Any unpaid invoices after 30 days shall accrue interest at the rate of 10% per annum.

For the convenience of Kosmont's clients, we offer a secure credit card payment service. The credit card payment link is: <https://kosmont.paidyet.com> and there are two ways to make a secure credit card payment:

1. Fill in the "**Make a Payment**" form when you go to the link (<https://kosmont.paidyet.com>),
or

2. Call Kosmont Companies' accounting desk (Ms. Reny Sultan; (424) 297-1072) to make a credit card payment

Consultant is prepared to commence work upon receipt of executed Agreement.

DISCLOSURE: Compensation for possible transaction-based services.

The following is being provided solely as an advance disclosure of possible real estate brokerage and finance services and potential compensation for such services. This disclosure is not intended to commit the Client.

When assignments involve real estate/property brokerage services, such transaction-based services are typically provided by Kosmont Real Estate Services, Inc. dba Kosmont Realty ("KR") is licensed by the State of California Department of Real Estate (License# 02058445). Compensation to KR is typically paid through commissions for property sale transactions, lease transactions and success/broker fees. KR also provides Broker Opinions of Value ("BOV") services on a fixed fee basis.

When assignments involve public finance services on behalf of a public agency, such municipal advisory services are provided by Kosmont Financial Services (KFS). KFS is an independent Registered Municipal Advisor with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

SEC registration does not constitute an endorsement of the firm by the Commission or state securities regulators.

V. OTHER PROVISIONS

A. Termination. Client or Consultant shall have the right to terminate this Agreement at any time upon written notification to the other party. Payment for fees accrued through the date of termination shall be remitted in full.

B. Arbitration. Any controversy or claim arising out of or in relation to this Agreement, or the making, performance, interpretation or breach thereof, shall be settled by arbitration at JAMS in Los Angeles, California. Each of the parties to such arbitration proceeding shall be entitled to take up to five depositions with document requests. The provisions of Section 1283.05 (except subdivision (e) thereof) of the California Code of Civil Procedure are incorporated by reference herein, except to the extent they conflict with this Agreement, in which case this Agreement is controlling. If the matter is heard by only one arbitrator, such arbitrator shall be a member of the State Bar of California or a retired judge. If the matter is heard by an arbitration panel, at least one member of such panel shall be a member of the State Bar of California or a retired judge. The arbitrator or arbitrators shall decide all questions of law, and all mixed questions of law and fact, in accordance with the substantive law of the State of California to the end that all rights and defenses which either party may have asserted in a court of competent jurisdiction shall be fully available to such party in the arbitration proceeding contemplated hereby. The arbitrator and arbitrators shall set forth and deliver their findings of fact and conclusions of law with the delivery

of the arbitration award. Judgment upon the award rendered shall be final and non-appealable and may be entered in any court having jurisdiction.

C. Attorneys' Fees. In the event of any legal action, arbitration, or proceeding arising out of an alleged breach of this Agreement, the party prevailing in such legal action, arbitration, or proceeding shall be entitled to recover reasonable attorneys' fees, expenses and costs, as well as all actual attorneys' fees, expenses and cost incurred in enforcing any judgment entered.

D. Authority. Each of the parties executing this Agreement warrants that persons duly authorized to bind each such party to its terms execute this Agreement.

E. Further Actions. The parties agree to execute such additional documents and take such further actions as may be necessary to carry out the provisions and intent of this Agreement.

F. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party.

G. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

H. Entire Agreement; Amendments and Waivers. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and any and all prior discussions, negotiations, commitments and understanding, whether written or oral, related hereto are superseded hereby. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing signed by both parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver of such provisions unless otherwise expressly provided. Each party to this Agreement has participated in its drafting and, therefore, ambiguities in this Agreement will not be construed against any party to this Agreement.

I. Severability. If any term or provision of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and in force to the full extent permitted by law.

J. Notices. All notices, requests, demands and other communications which may be required under this Agreement shall be in writing and shall be deemed to have been received when transmitted; if personally delivered, if transmitted by telecopier, electronic or digital transmission method, upon transmission; if sent by next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express), the day after it is sent; and if sent by certified or registered mail, return receipt requested, upon receipt. In each case, notice shall be sent to the principal place of business of the respective party. Either party may change its address by giving written notice thereof to the other in accordance with the provisions of this paragraph.

K. Titles and Captions. Titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

L. Governing Law. The statutory, administrative and judicial law of the State of California (without reference to choice of law provisions of California law) shall govern the execution and performance of this Agreement.

M. Confidentiality. Each of the parties agrees not to disclose this Agreement or any information concerning this Agreement to any persons or entities, other than to their attorneys and accountants, or as otherwise may be required by law.

N. Counterparts. This Agreement may be executed in one or more counterparts, each of which constitutes an original, and all of which together constitute one and the same instrument. The signature of any person on a telecopy of this Agreement, or any notice, action or consent taken pursuant to this Agreement shall have the same full force and effect as such person's original signature.

O. Disclaimer. Consultant's financial analysis activities and work product, which may include but is not limited to pro forma analysis and tax projections, are projections only. Actual results may differ materially from those expressed in the analysis performed by Consultant due to the integrity of data received, market conditions, economic events and conditions, and a variety of factors that could materially affect the data and conclusions. Client's reliance on Consultant's analysis must consider the foregoing.

Consultant services outlined and described herein are advisory services only. Any decisions or actions taken or not taken by Client and affiliates, are deemed to be based on Client's understanding and by execution of this Agreement, acknowledgement that Consultant's services are advisory only and as such, cannot be relied on as to the results, performance and conclusions of any investment or project that Client may or may not undertake as related to the services provided including any verbal or written communications by and between the Client and Consultant.

Client acknowledges that Consultant's use of work product is limited to the purposes contemplated within this Agreement. Consultant makes no representation of the work product's application to, or suitability for use in, circumstances not contemplated by the scope of work under this Agreement.

P. Limitation of Damages. In the event Consultant is found liable for any violation of duty, whether in tort or in contract, damages shall be limited to the amount Consultant has received from Client.

Q. Force Majeure. Consultant shall not be liable for failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by significant circumstances beyond its reasonable control, including, without limitation: epidemic; acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes;



riots; wide-spread power failures and wide-spread internet failure. Contractual performance and deadline(s) shall be extended for a period equal to the time lost by reason of the delay.

R. Expiration of Proposal for Services. If this Agreement is not fully executed by the parties within thirty (30) days from the date of this letter, this proposal shall expire.

S. Not an agreement for Legal Services or Legal Advice. This Agreement does not constitute an agreement for the performance of legal services or the provision of legal advice, or legal opinion. Client should seek independent legal counsel on matters for which Client is seeking legal advice.



VI. ACCEPTANCE AND AUTHORIZATION

If this Agreement is acceptable to Client, please execute two copies of the Agreement and return both originals to Kosmont Companies. Upon receipt of both signed contracts, we will return one fully executed original for your files. Kosmont will commence work upon receipt of executed Agreement.

Read, understood, and agreed to this

____ Day of _____ 2023

City of Clovis

Kosmont & Associates, Inc.
doing business as "Kosmont Companies"

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print Name)

Name: Ken K. Hira

Its: _____
(Title)

Its: President

ATTACHMENT A

Kosmont Companies 2023 Public Agency Fee Schedule

Professional Services

Chairman & CEO	\$445.00/hour
President	\$385.00/hour
Sr. Vice President/Sr. Advisor/Sr. Managing Director	\$350.00/hour
Vice President/Project Advisor	\$225.00/hour
Senior Project Analyst	\$195.00/hour
Project Analyst/Project Research	\$165.00/hour
Assistant Project Analyst/Assistant Project Manager	\$125.00/hour
Project Promotion/Graphics/GIS Mapping Services	\$ 95.00/hour
Clerical Support	\$ 70.00/hour

Additional Expenses

In addition to professional services (labor fees):

- 1) An administrative fee for in-house copy, fax, phone, postage costs, digital/technological support and related administrative expenses will be charged, which will be computed at four percent (4.0 %) of monthly Kosmont Companies professional service fees incurred; plus
 - 2) Out-of-pocket expenditures, such as travel and mileage, professional printing, and delivery charges for messenger and overnight packages will be charged at cost.
 - 3) Project/Market data sources for support of evaluation and analysis e.g., ESRI, Placer.ai, CoStar/STR, IMPLAN, ParcelQuest and other based on quoted project cost.
 - 4) If Kosmont retains Third Party Vendor(s) for Client (with Client's advance approval), fees and cost will be billed to Client at 1.1X (times) fees and costs.
 - 5) Consultant's attendance or participation at any public meeting, whether such participation is in person, digital, video and/or telephonic (e.g., *City Council, Planning Commission, Public Agency Board, other*) requested by Client and are beyond those specifically identified in the Scope of Work will be billed at the professional services (hourly) fees as shown on this Attachment A.
- **Charges for Court/Deposition/Expert Witness-Related Appearances**
Court-related (non-preparation) activities, such as court appearances, depositions, mediation, arbitration, dispute resolution and other expert witness activities, will be charged at a court rate of 1.5 times scheduled rates, with a 4-hour minimum.

Rates shall remain in effect until December 31, 2023.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 5, 2023

SUBJECT: Administration – Approval – Res. 23-____, Amending the 2023-2024 Planning and Development Services Budget, and Authorize the City Manager to enter into an Agreement with the Clovis Rodeo Association for City use of Rodeo Grounds Facilities.

ATTACHMENTS: 1. Resolution 23-____

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

1. For the City Council to approve a resolution amending the 2023-2024 Planning and Development Services Budget; and
2. Authorize the City Manager to enter into an Agreement with the Clovis Rodeo Association for City use of the Rodeo Grounds facilities.

EXECUTIVE SUMMARY

City of Clovis staff uses the facilities of the Rodeo Grounds several times per year for various reasons. The City desires to continue to use the Rodeo Grounds facilities for various functions, including employee training opportunities and other City events. In September 2021, Council approved a three-year agreement with the Rodeo Association for use of their facilities in exchange for waiving associated building and engineering permit fees owed to the City for the new pavilion in the amount of \$10,000.00.

The Rodeo Association is currently constructing an additional viewing pavilion at the Rodeo Grounds, and the associated building and engineering permit fees owed to the City for the new pavilion are approximately \$10,000.00. The Rodeo Association has reached out to the City and is requesting a five-year extension to the existing agreement. Staff is recommending that City Council authorize staff to waive the building and engineering permit fees for the pavilion project

in return for the Rodeo Association agreeing to allow the City to use the Rodeo Grounds facilities for various City functions and events.

If the agreement is approved, the City shall have the right to use the Rodeo Grounds facilities up to five (5) times a year for an additional five (5) years for City functions and events as determined by the City and as mutually arranged by the City Manager and the President of the Association Board. The current agreement expires in September 2024, and the five-year extension would extend the agreement through 2029.

Attachment 1 is a resolution to reimburse Planning & Development Services \$10,000 from the General Fund. **Attachment B of Attachment 1** is the draft agreement between the City and the Rodeo Association. **Attachment A of Attachment B** is the current agreement.

FISCAL IMPACT

Approval of the resolution will transfer \$10,000 to Planning & Development Services from the General Fund.

REASON FOR RECOMMENDATION

Staff has used the Rodeo Grounds Facilities for years and this agreement provides a means to continue to use the facilities over the next five years in exchange for waiving the building and engineering permit fees for the pavilion project.

ACTIONS FOLLOWING APPROVAL

If approved staff will execute the Agreement and implement actions associated with it.

Prepared by: John Holt, City Manager

Reviewed by: City Manager AH

RESOLUTION 23-__**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AN AMENDMENT TO THE FY 2023-2024 BUDGET**

WHEREAS, the City Council adopted the FY2023-24 City budget on June 5, 2023; and

WHEREAS, in September 2021, Council approved a three-year agreement with the Rodeo Association (**Attachment B**) for use of their facilities in exchange for waiving associated building and engineering permit fees owed to the City for the new pavilion in the amount of \$10,000.00. The term of that agreement runs through September 2024; and

WHEREAS, the Rodeo Association is currently constructing an additional viewing pavilion at the Rodeo Grounds, and the associated building and engineering permit fees owed to the City for the new pavilion are approximately \$10,000.00; and

WHEREAS, the Rodeo Association has reached out to the City and is requesting a five-year extension to the existing agreement; and

WHEREAS, the City shall have the right to use the Rodeo Grounds facilities up to five (5) times a year for an additional five (5) years for City functions and events as determined by the City and as mutually arranged by the City Manager and the president of the Association board; and

WHEREAS, the current agreement expires in September 2024, and this five-year extension would extend the agreement through 2029; and

WHEREAS, the City Council has agreed that, in exchange for use of the Clovis Rodeo Grounds, it will waive certain incurred building and engineering permit fees not to exceed \$10,000.00; and

WHEREAS, the City Council determines that a transfer of funds is necessary to reimburse the Planning and Development Services Fund for said fees; and

WHEREAS, it has been determined that the funds for this transfer shall be made from the General Fund in the amount of \$10,000.

NOW, THEREFORE, BE IT RESOLVED, that the City of Clovis hereby approves the budget amendment as shown in the "Summary of Transfers by Fund 2023-24" as shown as **Attachment A**.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 5, 2023, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Mayor

City Clerk

Attachment A**SUMMARY OF TRANSFERS BY FUND 2023-24****Transfer In**

Fund	
Planning and Development Services	\$ 10,000
Total	<u>\$ 10,000</u>

Transfer Out

Fund	
General	\$ 10,000
Total	<u>\$ 10,000</u>

CLOVIS RODEO GROUNDS FACILITIES USE AGREEMENT

This Clovis Rodeo Grounds Facilities Use Agreement (“Agreement”) is entered into effective as of _____ (“Effective Date”) between the City of Clovis, a California municipal corporation (“City”) and the Clovis Rodeo Association (“Association”), pursuant to the following recitals, which are a substantive part of this Agreement:

RECITALS

A. The Association owns the Clovis Rodeo grounds located at 748 Rodeo Drive, Clovis, CA 93612, which hosts the annual Clovis Rodeo and other events and is made up of various buildings, grandstands, bleachers, pavilions, parking areas, and other facilities (hereinafter “Rodeo Ground Facilities”).

B. The City desires to use the Rodeo Ground Facilities for various functions, including employee training opportunities and other City events.

C. In September 2021, the City and Association approved a three-year agreement (Attachment A) for City use of Association facilities in exchange for waiving associated building and engineering permit fees owed to the City for the pavilion being constructed in 2021 in the amount of \$10,000.00. The term of that agreement runs through September 2024.

D. The Rodeo Association is currently constructing an additional viewing pavilion (2023) at the Rodeo Grounds, and the associated building and engineering permit fees owed to the City for the new pavilion are approximately \$10,000.00.

E. The Rodeo Association has reached out to the City and is requesting a five-year extension to the existing agreement in exchange for waiving certain incurred building and engineering permit fees not to exceed \$10,000.00 for the pavilion being constructed in 2023.

F. The City shall have the right to use the Rodeo Grounds facilities up to five (5) times a year for an additional five (5) years for City functions and events as determined by the City and as mutually arranged by the City Manager and the president of the Association board.

G. The current agreement expires in September 2024, and this five-year extension would extend the agreement through 2029.

H. The City Council has agreed that, in exchange for use of the Clovis Rodeo Grounds, it will waive certain incurred building and engineering permit fees not to exceed \$10,000.00.

NOW, THEREFORE, City and Association agree as follows:

ATTACHMENT B

AGREEMENT

1. Use of Rodeo Ground Facilities. City shall have the right to use the Rodeo Ground Facilities up to five (5) times a year for five (5) years after the termination of the 2021 agreement that runs through September 2024 for City functions and events as determined by the City and as mutually arranged by the City Manager and the president of the Association board. This five (5) year extension shall run through 2029. Such authorized use has value to the City given the proximity of the Rodeo Ground Facilities and in reducing the need and cost of renting other facilities.

2. Building and Planning Permit Fees for Pavilion. In return for the use of the Rodeo Ground Facilities in accordance with Section 1, the City waives the applicable City building and engineering permit fees associated with the new pavilion constructed by the Association at the Rodeo Grounds. Nothing herein shall prevent the City, in its sole discretion, from transferring City funds to reimburse the Planning and Development Services Fund for the fees waived herein.

3. Insurance and Indemnity. City shall maintain adequate self-insurance or policies of insurance to cover any of its activities at the Rodeo Ground Facilities. The City shall indemnify, defend, and hold the Association harmless from and against all costs, claims, damages or liabilities, including without limitation property damage and personal injury, arising out of or relating to the City's use of the Rodeo Ground Facilities pursuant to this Agreement, except to the extent caused by the negligence or willful misconduct of the Association.

4. Voluntary Agreement; Authority to Execute. The parties each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The parties further represent that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority from their governing bodies to execute this Agreement on behalf of the respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for a term of five (5) years after the termination of the 2021 agreement that runs through September 2024. This five (5) year Agreement extension shall run through 2029.

CLOVIS RODEO ASSOCIATION

CITY OF CLOVIS

By: _____
 _____, President

By: _____
 John Holt, City Manager

Date: _____

Date: _____

CLOVIS RODEO GROUNDS FACILITIES USE AGREEMENT

This Clovis Rodeo Grounds Facilities Use Agreement (“Agreement”) is entered into effective as of September 7, 2021 (“Effective Date”) between the City of Clovis, a California municipal corporation (“City”) and the Clovis Rodeo Association (“Association”), pursuant to the following recitals, which are a substantive part of this Agreement:

RECITALS

A. The Association owns the Clovis Rodeo grounds located at 748 Rodeo Drive, Clovis, CA 93612, which hosts the annual Clovis Rodeo and other events and is made up of various buildings, grandstands, bleachers, pavilions, parking areas, and other facilities (hereinafter “Rodeo Ground Facilities”).

B. The City desires to use the Rodeo Ground Facilities for various functions, including employee training opportunities and other City events.

C. The Association has recently completed the construction of a viewing pavilion at the Rodeo Grounds, and the associated building and engineering permit fees owed to the City for the new pavilion are \$10,000.00.

D. In accordance with the terms of this Agreement, City is willing to waive the building and engineering permit fees for the pavilion project in return for the Association agreeing to allow the City to use the Rodeo Ground Facilities for various City functions and events.

NOW, THEREFORE, City and Association agree as follows:

AGREEMENT

1. Use of Rodeo Ground Facilities. City shall have the right to use the Rodeo Ground Facilities up to five (5) times a year for three (3) years after the Effective Date for City functions and events as determined by the City and as mutually arranged by the City Manager and the president of the Association board. Such authorized use has value to the City given the proximity of the Rodeo Ground Facilities and in reducing the need and cost of renting other facilities.

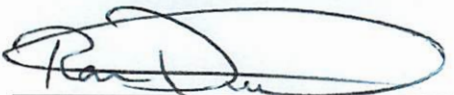
2. Building and Planning Permit Fees for Pavilion. In return for the use of the Rodeo Ground Facilities in accordance with Section 1, the City waives the applicable City building and engineering permit fees associated with the new pavilion constructed by the Association at the Rodeo Grounds. Nothing herein shall prevent the City, in its sole discretion, from transferring City funds to reimburse the Planning and Development Services Fund for the fees waived herein.

3. Insurance and Indemnity. City shall maintain adequate self-insurance or policies of insurance to cover any of its activities at the Rodeo Ground Facilities. The City shall indemnify, defend, and hold the Association harmless from and against all costs, claims, damages or liabilities, including without limitation property damage and personal injury, arising out of or relating to the City’s use of the Rodeo Ground Facilities pursuant to this Agreement, except to the extent caused by the negligence or willful misconduct of the Association.

4. Voluntary Agreement; Authority to Execute. The parties each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The parties further represent that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority from their governing body to execute this Agreement on behalf of the respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date set forth herein.

CLOVIS RODEO ASSOCIATION

By: 
Ron Dunbar President

CITY OF CLOVIS

By: 
Luke Serpa, City Manager

J:\WDOCS\00607\001\AGT\00889824.DOCX



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: September 5, 2023

SUBJECT: General Services – Approval - Claim Rejection of the General Liability Claim on behalf of Brooklyn Sykes, Giani Christensen, and Tiffany Shoemaker.

ATTACHMENTS: None.

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

Reject the General Liability Claims filed on behalf of Brooklyn Sykes, Giani Christensen, and Tiffany Shoemaker.

EXECUTIVE SUMMARY

On behalf of Brooklyn Sykes, Giani Christensen, and Tiffany Shoemaker (claimants) a General Liability Claim against the City of Clovis was filed on August 11, 2023, regarding an alleged City tree branch falling on top of Tiffany Shoemaker and her two children Brooklyn Sykes, and Giani Christensen. Ms. Shoemaker claims that she and her children sustained bodily injuries, emotional distress, and seeks reimbursement for damages. It is recommended that the claim is rejected at this time.

BACKGROUND

On August 11, 2023, a General Liability Claim was filed against the City of Clovis on behalf of Brooklyn Sykes, Giani Christensen, and Tiffany Shoemaker. The claim was considered legally sufficient and timely. Ms. Shoemaker alleged that she was walking southbound on Villa Avenue with her two children (Brooklyn Sykes and Giani Christensen) when an overgrown decayed City branch fell on top of Ms. Shoemaker and her two children trapping them underneath. Ms. Shoemaker further alleges that she and her children sustained bodily injuries and emotional distress.

Ms. Shoemaker and her children seek damages for medical expenses, physical injuries, emotional distress in an amount in excess of \$25,000. The claims have been filed as a “civil unlimited case”.

FISCAL IMPACT

Rejection of the claim does not result in any fiscal impact.

REASON FOR RECOMMENDATION

It is recommended that the claim be rejected. The City is disputing this claim. By rejecting this claim, the time in which a lawsuit for various claims may be filed against the City will begin to run.

ACTIONS FOLLOWING APPROVAL

A rejection notice letter will be sent to the claimants advising that the claims had been rejected.

Prepared by: Charles W. Johnson, Management Analyst

Reviewed by: City Manager AK



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: September 5, 2023

SUBJECT: General Services – Approval – Res. 23-____, Authorizing the City Manager to Execute an Agreement for Older Americans Act Funding for Title III C-1 Nutrition Services Through the Fresno-Madera Area Agency on Aging (FMAAA); and Approval Res. 23-____, Amending the FY 2023-2024 General Services Department Budget to Reflect \$41,000.00 in Grant Funding for the Clovis Senior Activity Center Awarded by the Fresno-Madera Area Agency on Aging.

ATTACHMENTS: 1. Grant Application Res. 23-____
2. Grant Contract
3. Budget Amendment Res.23-____

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to approve a resolution authorizing the City Manager to execute an agreement for Older Americans Act Funding for Title III C-1 Nutrition Services through the Fresno-Madera Area Agency on Aging (FMAAA); and for the City Council to approve a resolution amending the FY 2023-2024 General Services Department budget to reflect \$41,000.00 in grant funding for the Clovis Senior Activity Center awarded by the Fresno-Madera Area Agency on Aging.

EXECUTIVE SUMMARY

The City of Clovis has annually received funding for nutrition programs through the FMAAA. The nutrition program funding was used to provide homebound and in-center meals for those seniors in need. The program was suspended at the beginning of the COVID19 pandemic in March 2020 and has remained on pause. In anticipation of the opening of the new senior center at Landmark Square, staff is recommending the reinstatement of the in-center lunch program beginning January 2024. The total grant allocation for FY 2023-2024 is \$41,000.00, of which \$10,000.00

is a one-time allocation for restart expenses after the pandemic. The remaining \$31,000.00 will be used for food purchase and administration of the program.

BACKGROUND

The City of Clovis has received grant funds from the FMAAA for senior service programs since 1981. The funding is made available on an annual basis and the City must reapply each year for the grant. The FMAAA released its request for proposal for FY 2023-2024 senior services program funding for the nutrition program. Different this year is an additional grant amount to be used for one-time restart expenses after the pandemic.

The City of Clovis' allocation from FMAAA for FY2023-2024 is \$31,000.00 for the nutrition program. The expected funding will be used for senior nutrition site management which includes participant assessments, coordinated meal orders, and on-site management of the lunch program at the new Clovis Senior Activity Center at Landmark Square. Prior to the pandemic, an average of 75 meals were served at the center daily. The hot meals are prepared and delivered to the senior center by Fresno County EOC. The senior center has managed the senior nutrition program since 1994 and meets all the monitoring criteria for this program. An additional \$10,000 is available this year for one-time restart expenses.

FISCAL IMPACT

The FMAAA grant funding for FY 2023-2024 is as follows:

-
- | | |
|--|-------------|
| • Title III C-1 Congregant Nutrition January 2024 – June 2024 | \$31,000.00 |
| • Title III C-1 Congregant Nutrition One-Time Start-Up Funding | \$10,000.00 |

Total FMAAA Funding FY 2023-2024	\$41,000.00
---	--------------------

REASON FOR RECOMMENDATION

The FMAAA funds are essential in re-establishing the nutrition programs at the Clovis Senior Activity Center. The grant funding is used to provide staff, supplies, and administration of the program.

ACTIONS FOLLOWING APPROVAL

Upon approval of the grant proposal by the FMAAA, the City Manager will sign grant contract #23-0051ARP for the funding.

Prepared by: Amy Hance, Deputy General Services Director

Reviewed by: City Manager AA

RESOLUTION 23-__

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS FOR OLDER AMERICAN ACT FUNDING

WHEREAS, the City of Clovis is the direct sponsor of the Clovis Senior Services Program with partial funding from an Older Americans Act Grant from the Fresno Madera Area Agency on Aging; and

WHEREAS, the Clovis Community Services Division provides multi-purpose supportive services at the Clovis Senior Activity Center, which includes information and assistance, nutrition, consumer services, community services, education, and recreation services for the older adult population in Clovis; and

WHEREAS, the City of Clovis intends to apply for Older Americans Act funding for Title III C-1 (Nutrition services) to be administered through the Senior Services Program of the Clovis Community Services Division located at the Clovis Senior Activity Center.

NOW, THEREFORE, BE IT RESOLVED, that the City of Clovis:

1. Intends to continue to be a direct sponsor of the Clovis Senior Services Program.
2. Authorizes the City Manager to submit the application for Older Americans Act funding, grant #23-0051ARP for FY 2023-2024 including any subsequent amendments and all necessary supporting documents.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 5, 2023, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Mayor

City Clerk

FRESNO-MADERA AREA AGENCY ON AGING AMERICAN RESCUE PLAN ACT GRANT AWARD TERMS AND CONDITIONS DECLARATION

Activities under this award shall be carried out in accordance with Title III and Title VII of the Older Americans Act of 1965, as amended (United States Code Title 42, Section 3001); the program regulations and policy directives relating thereto; federal and State laws; and the California Welfare and Institutions Code, Sections 9000-9023, all of which are, or may be, operative during the term of this sub-grant award. This Agreement incorporates the terms and conditions which support an award of American Rescue Plan Act Funds.

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

- A. "Agency on Aging" and "FMAAA" means the Fresno-Madera Area Agency on Aging interchangeably.
- B. "Agreement" or "Contract" shall mean the Fresno-Madera Area Agency on Aging American Rescue Plan Act Agreement; American Rescue Plan Act Grant Award Terms and Conditions Declaration (Articles I through XX); Appendices; Program Exhibits; Budget Display; Attachments; Amendments; and any other documents incorporated by reference, unless otherwise provided in this Article.
- C. "Allocation" means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives. (2 CFR §200.1 and 45 CFR §75.2)
- D. "Contractor" or "Service Provider" means the legal entity awarded funds under this Agreement and which is accountable to the Agency on Aging, the State, and/or federal government for use of these funds and which is responsible for executing the provisions for services provided under this Agreement.
- E. "CCR" means California Code of Regulations.
- F. "CFR" means Code of Federal Regulations.
- G. "Disallowed costs" means those charges determined to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award. (2 CFR §200.1 and 45 CFR §75.2)

Attachment 2

- H. “In-Kind Contributions” means the value of non-cash contributions donated to support the project or program (e.g. property, service, etc.).
- I. “Matching Contributions” means local cash and/or in-kind contributions made by the Contractor, a subcontractor, or other local resources that qualify as match for the contract funding.
- J. “OAA” means Older Americans Act.
- K. “OMB” means the federal Office of Management and Budget.
- L. “Program Income” means revenue generated by an Area Agency on Aging or Contractor from contract-supported activities. Program Income is:
 - 1. Voluntary contributions received from a participant or responsible party for services received.
 - 2. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
 - 3. Royalties received on patents and copyrights from contract-supported activities.
 - 4. Proceeds from the sale of goods created under an Agency on Aging grant of funds.
- M. “PSA 14” means the State Planning and Service Area comprised of Fresno and Madera Counties.
- N. “Questioned Costs” means a cost that is questioned by the auditor because of an audit finding which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds; where the costs, at the time of the audit, are not supported by adequate documentation; or where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances. (2 CFR §200.1 and 45 CFR §75.2).
- O. “Recoverable cost” means the questioned cost identified from an audit.
- P. “Reimbursable item” also means “allowable cost” and “compensable item.”
- Q. “State” and “Department” means the State of California and the California Department of Aging (CDA) interchangeably.
- R. “Subcontract” means any form of legal agreement between the Contractor and the Subcontractor, including an agreement that the Contractor or

Subcontractor would consider to be a contract, including vendor type Agreements for providing goods or services under this Agreement.

- S. “Subcontractor” means the legal entity that receives funds from the Contractor to carry out any part of a federal award identified in this Agreement.
- T. “USC” means United States Code.
- U. As used throughout this Agreement, the term “shall” is mandatory; the term “may” is permissive.
- V. The terms and conditions of this grant award and other requirements have the following order of precedence if there is any conflict in what they require:
 1. The Older Americans Act of 1965 and Amendments of 2020 (OAA as amended) and other applicable federal statutes and their implementing regulations.
 2. If applicable, the Older Californians Act and other California State codes and regulations.
 3. Contract Agreement, including American Rescue Plan Act Grant Award Terms and Conditions Declaration, all Appendices, all Exhibits, and any amendments thereto.
 4. Any other documents incorporated herein by reference, including, if applicable, the federal Health and Human Services (HHS) terms and conditions found in Part II of the HHS Grant Policy Statement. The HHS Grant Policy Statement is available under the HHS Policy Requirements Topic at <https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html>.
 5. Program memos and other guidance issued by the California Department of Aging, including those specific to American Rescue Plan Act funding.
- W. American Rescue Plan Act means the American Rescue Plan Act of 2021 (P.L. 117-2) signed into federal law on March 11, 2021.

ARTICLE II. AGREEMENT

- A. All elements of this Agreement, as defined in Article I, Section B, and as approved by the Agency on Aging in making this award, are hereby incorporated by reference, as if fully set forth herein.

- B. Time is of the essence in this Agreement. All contracts must be signed and returned to the Fresno-Madera Area Agency on Aging within forty-five (45) days of the date on the contract cover letter. If the signed contract is not returned by the designated date and there has been no approval granted, then the funds may be reallocated by the Fresno-Madera Area Agency on Aging Governing Board. The Agency on Aging will send a Notice of Termination of Negotiations to the non-responsive Service Provider on the 46th day from the date of the contract cover letter by certified mail. A copy of the Fresno-Madera Area Agency on Aging Appeal Procedure will be sent with the letter.
- C. A copy of this Agreement is on file and available for inspection at the Fresno-Madera Area Agency on Aging, 2520 West Shaw Lane, Suite 101A, Fresno, California, 93711.

ARTICLE III. TERM OF AGREEMENT

- A. This Agreement is of no force or effect until signed by both parties hereto and approved by the Agency on Aging. The Contractor may not commence performance until such approval has been obtained, or until a signed Letter of Authority has been provided by the Agency on Aging.
- B. The term of this Agreement is from July 1, 2023, through June 30, 2024, at which time the Agreement expires, subject however, to earlier termination or cancellation as herein provided. Contract awards are limited to a one-year period; however, at the discretion of the Agency on Aging, contracts may be renegotiated up to a maximum of one additional one-year period subject to annual renegotiation and availability of American Rescue Plan Act funding.
- C. Should the Contractor or subcontractor begin work in advance of receiving notice that the Agreement is approved, and before obtaining a signed Letter of Authority from the Agency on Aging, that work may be considered as having been performed at-risk as a volunteer and may not be reimbursed or compensated.

ARTICLE IV. REASONABLENESS OF COMPENSATION

Compensation for work or services performed under this Agreement shall be reasonable and based on an analysis of job requirements and comparability with similar work or services in the local labor market.

ARTICLE V. ASSURANCES

A. Agreement Authorization

1. If a public entity, the Contractor shall submit to the Agency on Aging a copy of the resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private entity, the Contractor shall submit to the Agency on Aging an authorization by the Governing Board of the Contractor to execute this Agreement, referencing this Agreement number. These documents, including minute orders, must also identify the action taken.
2. Documentation in the form of a resolution, order, or motion by the Governing Board of the Contractor is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of the Contractor authorizing the designee to execute the original and all subsequent amendments to this Agreement.

B. Administration

1. The Contractor shall be a public entity, private nonprofit entity, or Joint Powers Authority (JPA). If a private nonprofit corporation or JPA, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
 - a. Any grant awards to for-profit entities are subject to review and approval by the California Department of Aging prior to issuance of a contract by the Agency on Aging to the Contractor. [22 CCR §7362]
2. The Contractor shall ensure that any subcontractors providing services under this Agreement shall be of sound financial status. Any subcontracting private entity or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
3. Failure to maintain good standing by the contracting entity shall result in suspension or termination of this Agreement with the Agency on Aging until satisfactory status is restored. Failure to maintain good standing by a subcontracting entity shall result in suspension or termination of the subcontract by the Contractor until satisfactory status is restored.
4. This Agreement is not assignable by the Contractor, either in whole or in part, without the written consent of the Agency on Aging in the form of a formal written amendment.

5. The Contractor, and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State or the Agency on Aging.
6. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect and shall not be affected.

C. Debarment, Suspension, and Other Responsibility Matters

1. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:
 - a. Are not presently debarred or suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency. [45 CFR §92.35]
 - b. Have not, within a three-year period preceding this Agreement, been convicted of, or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in Section C.1.b of this Article.
 - d. Have not, within a three-year period preceding this Agreement, had one or more public transactions (federal, State, or local) terminated for cause or default.
2. The Contractor shall report immediately to the Agency on Aging, in writing, any incidents of alleged fraud and/or abuse by either the Contractor or subcontractors. The Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the Agency on Aging.

3. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to the Subcontractor's debarment/suspension status.
4. The Contractor shall notify the Agency on Aging immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

D. Law, Policy and Procedure, Licenses, and Certificates

The Contractor agrees to administer this Agreement and require any subcontractors to administer their subcontracts in accordance with this Agreement, and with all applicable local, State, and federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Agreement and resolve all issues using good administrative practices and sound judgment. The Contractor and its subcontractors shall keep in effect all licenses, permits, notices, and certificates that are required by law.

E. Provision of Services, Staffing, and Standards of Work

1. The Contractor shall ensure the provision of services under this Agreement, as specified by the attached exhibits, which are hereby incorporated by reference. Inadequate performance or failure to make progress so as to endanger performance of this Agreement may result in imposition of sanctions as described in Appendix F, *Sanction Policy*, or termination of the Agreement as described in Article XVII, *Termination*.
2. The Contractor shall make every effort to meet the goals and objectives stipulated in this Agreement. Performance shall not be unilaterally reduced or otherwise changed without prior consultation with, and written approval of, the Agency on Aging. A service unit reduction that impacts the Agency's ability to provide service levels defined in its Area Plan or Area Plan Update service unit objectives requires:
 - a. Written approval from the California Department of Aging to the Agency on Aging if such reduction is greater than ten percent (10%).
 - b. An Amendment to the Agency on Aging's Area Plan if such reduction is greater than twenty percent (20%), including a public hearing; approval by the Agency's Governing Board and Advisory Council chairpersons and the Agency's Executive

Director; and approval by the California Department of Aging.
[22 CCR §7306(a)]

3. The Contractor agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to accepted professional standards.
4. The Contractor shall maintain adequate staff to meet the Contractor's obligations under this Agreement.
5. The Contractor shall make staff available to the California Department of Aging and the Agency on Aging for training and meetings, which the California Department of Aging or the Agency on Aging may find necessary from time to time.

F. Payroll Taxes and Deductions

The Contractor shall promptly forward payroll taxes, insurances, and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and federal and State income taxes withheld, to designated governmental agencies as required by law.

G. Nondiscrimination

The Contractor shall comply with all federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (Appendix B), which are hereby incorporated by reference. In addition, Contractor shall ensure compliance with the following:

1. Equal Access to Federally-Funded Benefits, Programs, and Activities

Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 USC §2000d; 45 CFR §80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin.

2. Equal Access to State-Funded Benefits, Programs, and Activities

Contractor shall, unless exempted, ensure compliance with the requirements of California Government Code §11135 et seq., and 22 CCR §11140 et seq., which prohibit recipients of State financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. [22 CCR §98323]

3. California Civil Rights Laws (Public Contract Code §2010)
 - a. For contracts of \$100,000 or more, executed or renewed after January 1, 2017, the Contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code).
 - b. For contracts of \$100,000 or more, executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).
4. Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. [42 USC §12101 et seq.]
5. The Contractor shall not require proof of age, citizenship, or disability as a condition of receiving services.
6. Contractor agrees to include these requirements in all contracts it enters into with subcontractors to provide services pursuant to this Agreement.

H. Information Integrity and Security

1. Information Assets

The Contractor, and its Subcontractors/Vendors, shall have in place operational policies, procedures, and practices to protect Agency on Aging information assets, including those assets used to store or access Personal Health Information (PHI), Personal Information (PI) and any information protected under the Health Insurance Portability and Accountability Act (HIPAA), (i.e., public, confidential, sensitive and/or personal identifying information) herein referred to as Personal, Sensitive and Confidential Information (PSCI) as specified in the State Administrative Manual, 5300 to 5365.3; Cal. Gov. Code §11019.9, DGS Management Memo 06-12; DOF Budget Letter 06-34; CDA Program Memorandum 07-18, Protection of Information Assets; and the Statewide Health Information Policy Manual.

Information assets include, but are not limited to:

- a. Information collected and/or accessed in the administration of Agency on Aging programs and services.
- b. Information Assets may be in hard copy or electronic format and may include, but are not limited to:
 - 1) Reports;
 - 2) Notes;
 - 3) Forms;
 - 4) Computers, laptops, cellphones, printers, scanners;
 - 5) Networks (LAN, WAN, WIFI), servers, switches, routers;
 - 6) Storage media, hard drives, flash drives, cloud storage;
 - 7) Data, applications, databases.

2. Encryption of Computing Devices

The Contractor, and its subcontractors/Vendors, are required to use 128-Bit encryption for PSCI data that is collected and stored on all computing devices (including but not limited to, workstations, servers, laptops, personal digital assistants, notebook computers and backup media) and/or portable electronic storage media (including but not limited to, discs, thumb/flash drives, portable hard drives, and backup media).

- a. Use of portable electronic storage media (including, but not limited to jump drives, thumb drives, and flash drives; portable hard drives; and CDs, DVDs, and other discs) is not allowed under this Agreement.

3. Disclosure

- a. The Contractor, and its Subcontractors/Vendors, shall ensure that all PSCI is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations, and State and Agency on Aging policies. The requirement to protect information shall remain in force until superseded by laws, regulations, and State and Agency on Aging policies.
- b. The Contractor, and its Subcontractors/Vendors, shall protect from unauthorized disclosure, PSCI such as names and other

identifying information concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.

- c. “Personal Identifying Information” shall include, but not be limited to: Name; identifying number; social security number; State driver’s license or State identification number; financial account numbers; and symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
 - d. The Contractor, and its Subcontractors/Vendors, shall not use PSCI above for any purpose other than carrying out the Contractor’s obligations under this Agreement. The Contractor and its Subcontractors are authorized to disclose and access identifying information for this purpose as required by the Older Americans Act.
 - e. The Contractor, and its Subcontractors/Vendors, shall not, except as otherwise specifically authorized by law or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than the Agency on Aging without prior written authorization from the Agency on Aging. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.
 - f. The Contractor, and its Subcontractors/Vendors, may allow a participant to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.
4. Privacy and Information Security Awareness Training
- a. The Contractor’s employees, Subcontractors/Vendors, and volunteers handling PSCI must complete the required Privacy and Information Security Awareness Training module available on the CDA Web site under Providers and Partners, Information Security and Privacy, at the following URL:

https://www.aging.ca.gov/Information_security
 - b. Privacy and Information Security Awareness Training must be completed within thirty (30) days of the start date of the

Contract/Agreement; within thirty (30) days of the start date of any new employee, Subcontractor, Vendor, or volunteer's employment; and annually thereafter.

- c. The Contractor must maintain certificates of completion on file and provide them to the Agency on Aging and the California Department of Aging upon request.

5. Health Insurance Portability and Accountability Act (HIPAA)

The Contractor agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act (HIPAA) and ensure that Subcontractors/ Vendors comply with the privacy and security requirements of HIPAA.

6. Information Integrity and Security Statement

The Contractor shall sign and return to the Agency on Aging the *Information Integrity and Security Statement* (Appendix C of this agreement), which is hereby incorporated by reference, and shall comply with all statutes and laws contained in the statement. This is to ensure that the Contractor is aware of, and agrees to comply with, their obligations to protect CDA and Agency on Aging information assets, including PSCI, from unauthorized access and disclosure.

7. Security Incident Reporting

A security incident occurs when CDA and/or Agency on Aging information assets are or reasonably believed to have been accessed, modified, destroyed, or disclosed without proper authorization, or are lost or stolen. The Contractor and its Subcontractors/Vendors must report all security incidents to the Agency on Aging immediately upon detection. A Security Incident Report form (CDA 1025) must be submitted to the CDA Information Security Officer, via the Agency on Aging, within five (5) business days of the date the incident was detected. The Security Incident Report form (CDA 1025) is available on the CDA Web site at the following URL:

https://www.aging.ca.gov/Information_security

8. Security Breach Notifications

Notice must be given by the Contractor, and/or its Subcontractors/ Vendors, to anyone whose PSCI could have been breached in

accordance with HIPAA, the Information Practices Act of 1977, and State policy.

9. Software Maintenance

The Contractor shall apply security patches and upgrades and keep anti-virus software up-to-date on all systems on which State and/or Agency on Aging data may be used.

10. Electronic Backups

The Contractor, and its Subcontractors/Vendors, shall ensure that all electronic information is protected by performing regular backups of automated files and databases, and ensure the availability of information assets for continued business. The Contractor, and its Subcontractors/Vendors, shall ensure that all data, files, and backup files are encrypted.

11. Provisions of Information Integrity and Security

The provisions contained in Article V, Section H, *Information Integrity and Security*, shall be included in all contracts of both the Contractor and its Subcontractors/Vendors.

I. Copyrights

1. If any material funded by this Agreement is subject to copyright, the State reserves the right to copyright such material and the Contractor agrees not to copyright such material, except as set forth in Section J of this Article.
2. The Contractor may request permission to copyright material by writing to the Executive Director of the Agency on Aging. The Executive Director shall forward such request to the State and shall relay the State's response to the Contractor within sixty (60) days from the date of receipt of the State's decision.
3. If the material is copyrighted with the consent of the State, the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author.
4. The Contractor certifies that it has appropriate systems and controls in place to ensure that funds provided under this Agreement will not be used in the performance of this Agreement for the acquisition,

operation, or maintenance of computer software in violation of copyright laws.

J. Rights in Data

1. The Contractor shall not publish or transfer any materials, as defined in Section J.2 of this Article, produced or resulting from activities supported by this Agreement without the express written consent of the Executive Director of the Agency on Aging. That consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within thirty (30) days after the written request is received by the Agency on Aging. The Agency on Aging may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit the Contractor from sharing identifying client information authorized by the participant or summary program information that is not client-specific.
2. As used in this Agreement, the term “subject data” means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
3. Subject only to the provisions of Article V, Section H, *Information Integrity and Security*, and Article V, Section I, *Copyrights*, of this Agreement, the State and the Agency on Aging may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and federal law all subject data delivered under this Agreement.
4. Materials published or transferred by the Contractor and financed with funds under this Agreement shall: (a) state “The materials or product were a result of a project funded by an Agreement with the Fresno-Madera Area Agency on Aging and the California Department of Aging;” (b) give the name of the entity, the address, and telephone number at which the supporting data is available; and (c) include the following statement: “The conclusions and opinions expressed may not be those of the Agency on Aging and/or the California Department of Aging and this publication may not be based upon or inclusive of all raw data.”

5. The Contractor agrees to acknowledge the receipt of all funding support from the Agency on Aging in news releases (radio, television, and newspaper); printed materials such as brochures, pamphlets, newsletters; the Contractor's Web site; and any other printed documents. Such acknowledgement shall make accurate reference to the service for which funding is provided, in whole or in part, by the Agency on Aging.
6. The Contractor shall forward a copy of all products and material developed in whole or in part with Agreement funds to the Agency on Aging for file.

K. Contracts in Excess of \$100,000

If all funding provided herein exceeds \$100,000, the Contractor shall comply with all applicable orders or requirements issued under the following laws:

1. Clean Air Act, as amended. [42 USC §7401]
2. Federal Water Pollution Control Act, as amended. [33 USC §1251 et seq.]
3. Environmental Protection Agency Regulations. [40 CFR §29] [Executive Order 11738]
4. State Contract Act. [California Public Contract Code §10295 et seq.]
5. Unruh Civil Rights Act. [California Public Contract Code §2010]

L. Lobbying Certification

The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence

an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal Agreement, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all subcontractors shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

M. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the Agency on Aging determines that a conflict of interest exists, any increase in costs associated with the conflict of interest may be disallowed by the Agency on Aging, and such conflict may constitute grounds for termination of the Agreement.
2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

N. Covenant Against Contingent Fees

1. The Contractor warrants that no person or selling agency has been employed or retained to solicit this Agreement. There has been no agreement to make commission payments in order to obtain this Agreement.

2. For breach or violation of this warranty, the Agency on Aging shall have the right to terminate this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

O. Facility Construction or Repair

1. This section applies only to Title III funds and not to other funds allocated to other Titles under the Older Americans Act.
 - a. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following and shall include such provisions in any applicable agreements with subcontractors:
 - i) Copeland "Anti-Kickback" Act [18 USC §874, 40 USC §3145] [29 CFR §3];
 - ii) Davis-Bacon Act [40 USC §3141 et seq.] [29 CFR §5];
 - iii) Contract Work Hours and Safety Standards Act [40 USC §3701 et seq.] [29 CFR §5, 6, 7, 8]; and
 - iv) Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations [41 CFR §60].
 - b. Payments are not permitted for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property except where permitted by law and by the Agency on Aging.
 - c. When funding is provided for construction and non-construction activities, the Contractor must obtain prior written approval from the Agency on Aging before making any fund or budget transfers between construction and non-construction.

- P. If this Agreement includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

Q. Grievance Process

1. The Contractor must establish a written grievance process for reviewing and attempting to resolve complaints of older individuals receiving services funded by this Agreement. At a minimum, the process shall include all of the following:
 - a. Time frames within which a complaint will be acted upon.
 - b. Written notification to the complainant of the results of the review, including a statement that the complainant may appeal to the Fresno-Madera Area Agency on Aging if dissatisfied with the results of the Contractor's review.
 - c. Confidentiality provisions to protect the complainant's rights to privacy. Only information relevant to the complaint may be released to the responding party without the older individual's consent.
2. The Contractor shall notify older individuals of the grievance process available to them by:
 - a. Posting notification of the process in visible and accessible areas, such as the bulletin boards in multipurpose senior centers. For areas in which a substantial number of older individuals are non-English speaking, the notification shall also be posted in the primary language of a significant number of older individuals.
 - b. Advising homebound older individuals of the process either orally or in writing upon the Contractor's contact with the individuals.
3. Complaints may involve, but not be limited to, any or all of the following:
 - a. Amount or duration of a service.
 - b. Denial or discontinuance of a service.
 - c. Dissatisfaction with the service being provided or with the service provider. If the complaint involves an issue of professional conduct that is under the jurisdiction of another entity, such as the California Medical Board or the State Bar Association, the complainant shall be referred to the proper entity.
 - d. Failure of the service provider to comply with any of the requirements set forth in CDA regulations or in this Agreement.

4. Nothing in this Article shall be construed as prohibiting older individuals from seeking other available remedies, such as presenting their complaints at an open meeting of the Contractor's governing board.

R. Disaster Plan

1. The Contractor shall prepare and maintain a disaster plan that ensures provision of critical services to meet the emergency needs of consumers they are charged to serve during medical or natural disasters, such as earthquakes or floods, and make such plan available to the Agency on Aging upon request.
2. The Contractor shall provide annual disaster response training and a current list of community resources for all employees and volunteers, and maintain documentation of such training.
3. The Contractor shall designate a primary and a secondary emergency contact. Following an emergency or disaster, the Contractor's designated contact shall update the Agency on Aging with the Contractor's operational status.
4. The Contractor shall complete Exhibit F, *Service Provider Emergency Resource Information*, included with this agreement, and advise the Agency on Aging whenever a change to this information occurs.

S. Community Focal Points

The Contractor acknowledges that the Agency on Aging has designated locations as Community Focal Points, as required by Title 22 CCR Article 3 §7302(a)(14), 45 CFR §1321.53(c), and OAA 2006 §306(a), which are attached as Appendix J, *Community Focal Points List*.

ARTICLE VI. FUNDS

A. Expenditure of Funds

1. The Contractor shall expend all funds received hereunder in accordance with this Agreement.
2. The Contractor shall comply with the standards and guidelines for procurement of supplies, equipment, and services as set forth in 45 CFR §92.36.

3. The Contractor and its Subcontractor/Vendors shall comply with California Governor's Executive Order 2-18-2011, which bans expenditures on promotional and marketing items colloquially known as "S.W.A.G." or "Stuff We All Get."
4. Travel Reimbursement
 - a. Any reimbursement by Contractor from funds provided under this Agreement for authorized travel and per diem shall be at rates not to exceed those paid by the State in accordance with the California Department of Human Resources (CalHR) rules and regulations.

In State:

- Mileage/Per Diem (meals and incidentals)/Lodging
<https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>

Out of State:

<http://hrmanual.calhr.ca.gov/Home/ManualItem/1/2201>

- b. This is not to be construed as limiting the Contractor from paying any differences in costs, from funds other than those provided by this Agreement, between the CalHR rates and any rates the Contractor is obligated to pay under other contractual agreements. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Agency on Aging and the State. [SCM 3.17.2.A(4)]
5. The Agency on Aging reserves the right to refuse payment to the Contractor or later disallow costs for any expenditure, as determined by the Agency on Aging to be noncompliant with this Agreement, unrelated or inappropriate to Agreement activities, or when inadequate supporting documentation is presented, or where prior approval was required but was not requested or not granted.

B. Accountability for Funds

1. The Contractor shall maintain accounting records for funds received under the terms and conditions of this Agreement. These records shall be separate from those for any other funds administered by the Contractor, and shall be maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards. [2 CFR §200] [45 CFR §75]

2. The Contractor shall ensure that funding for services as outlined herein are managed and prorated monthly to ensure that adequate American Rescue Plan Act funding is available to provide services through the ending date of this Agreement.
3. Funds made available under this Agreement shall supplement, and not supplant, any federal, State, or local funds expended by a State or unit of general-purpose local government to provide Title III (excluding Title III E) and Title VII services.
4. Financial Management Systems

The Contractor shall meet the following standards for its financial management systems, as stipulated in 2 CFR §200.302 and 45 CFR §75.302:

- a. Financial Reporting.
- b. Accounting Records.
- c. Complete Disclosure.
- d. Source Documentation.
- e. Internal Control.
- f. Budgetary Control.
- g. Cash Management (written procedures).
- h. Allowable Costs (written procedures).

C. Unexpended Funds

1. No later than January 1, 2024, the Contractor shall report to the Agency on Aging if any funds awarded through this Agreement will remain unexpended at the ending date of this Agreement.
2. The Agency on Aging shall request and receive from the Contractor release of funds awarded through this Agreement for an amount mutually agreed upon by both parties, not to exceed the estimated amount of unexpended funds. The Agency on Aging shall be

reasonable in its request for funds and the Contractor shall not unreasonably withhold permission for release of funds.

3. The Agency on Aging retains all rights to reallocate released funds into other programs, projects, or activities.
4. Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to the Agency on Aging immediately upon written demand, any funds provided under this Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Agreement, or the dissolution of the entity.

D. Funding Contingencies

1. It is understood between the parties that this Agreement may have been written before ascertaining the availability or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the State, and subsequently to the Agency on Aging, by the United States Government or the Budget Acts of the appropriate fiscal years for purposes of the contracted program(s). In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or the Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.
3. Payment for performance by the Contractor shall be dependent upon the availability of future appropriations by the Legislature or Congress for the purposes of this Agreement and approval of an itemized budget. No legal liability on the part of the State or the Agency on Aging for any payment may arise under this Contract until funds are made available; the itemized budget is approved by the State; and the Contractor has received an executed Agreement.
4. If funding for any State or Agency on Aging fiscal year is reduced or deleted by the State, Legislature, or Congress for the purposes of this program, the Agency on Aging shall have the option to either:
 - a. Terminate the Agreement pursuant to Section A.1 of Article XVII, *Termination*, of this Agreement; or

- b. Offer a contract amendment to the Contractor to reflect the reduced funding for this Agreement.
- 5. The Agency on Aging reserves the right to increase and/or decrease funds available under this Agreement to reflect any restrictions, limitations, or conditions.

ARTICLE VII. BUDGET AND BUDGET REVISION

- A. The Contractor shall be reimbursed for expenses only as itemized in the approved budget with the exception of line item budget transfers as noted in Section E of this Article and shall not be entitled to reimbursement for these expenses until this Agreement is approved and executed by the Agency on Aging. The approved Contractor's budget is hereby incorporated by reference into this Agreement as a part of Exhibit B.
- B. The final date to submit a budget revision to the Agency on Aging for this Agreement is March 15, 2024.
- C. Indirect Costs
 - 1. The maximum reimbursement amount allowable for indirect costs is ten percent (10%) of the Contractor's Modified Total Direct Costs (MTDC), excluding in-kind contributions and nonexpendable equipment. Indirect costs shall not exceed ten percent (10%) of the Contractor's MTDC per funding category.
 - 2. Contractors requesting reimbursement for indirect costs shall retain on file an approved indirect cost rate accepted by all federal awarding agencies or an allocation plan documenting the methodology used to determine the indirect costs.
 - 3. Indirect costs exceeding the ten percent (10%) maximum may be budgeted as in-kind for purposes of meeting matching requirements in Title III and Title VII programs only. Contractors must receive prior approval from the federal awarding agency, through the Agency on Aging with approval from the California Department of Aging, prior to budgeting the excess indirect costs as in-kind.
 - 4. For major Institutes of Higher Education and major nonprofit organizations, indirect costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all

other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). [2 CFR 200.414(a)] [45 CFR §75.414(a)]

D. Program Specific Funds

1. Program Income

- a. Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated.
- b. Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned (except as noted in Section D.1.d of this Article).
- c. For Title III B, III C, III D, III E, VII Ombudsman, and VII Elder Abuse Prevention programs, Program Income must be spent before contract funds (except as noted in Section D.1.d of this Article) and may reduce the total amount of contract funds payable to the Contractor.
- d. For American Rescue Plan Act Title III grant awards only, Program Income may be used to meet the matching requirements of this Agreement.
- e. Program Income must be used to expand baseline services.
- f. If as a result of advanced funds, the project earns interest on funds awarded by the Agency on Aging, that interest shall be identified as income to the program and used for program expenditures, with full documentation on file for all programs.

E. Line Item Budget Transfers

The Contractor may transfer Agreement funds between line items under the following terms and conditions:

1. The Contractor shall obtain prior approval from the Agency on Aging for any line item transfer of funds that exceeds ten percent (10%) of the total budget for each funding source, and submit a revised budget to the Agency on Aging.
2. The Contractor shall maintain a written record of all budget changes and clearly document line item budget changes. The record shall include the date, amount, and purpose of the transfer. This record shall be available to the Agency on Aging upon request and shall be maintained in the same manner as all other financial records.

F. Matching Contributions

1. “Matching Contributions” is defined in Article I, Section H.
 - a. Cash and/or in-kind contributions may count as match, if such contributions are used to meet program requirements.
 - b. Any matching contributions (cash or in-kind) must be verifiable from the records of the Contractor or subcontractor.
 - c. Matching contributions must be used for allowable costs in accordance with the Office of Management and Budget cost principles.
2. Minimum matching contributions for American Rescue Plan Act funded grants awarded by the Fresno-Madera Area Agency on Aging are determined as follows:
 - a. Title III B Supportive Services, Long-Term Care Ombudsman Program, Title III C1 Congregate Nutrition, C-1 Site Management, and Title III C2 Home-Delivered Meals is twenty-five percent (25%).
 - b. Title III E Family Caregiver Support Program is thirty percent (30%).
 - c. Title VII Elder Abuse Prevention; and Title III D Health Promotion – Evidence-Based: No match required.
3. Minimum matching requirements are calculated based on grant award amount, multiplied by the minimum matching contribution percentage set forth in the Terms and Conditions, Article VII, Section F, Subsection 2. For example, if the grant award was for \$20,000, the minimum matching contribution was at 30 percent, then the matching requirement amount would be \$6,000.
4. Matching contributions generated in excess of the minimum required are considered overmatch.

ARTICLE VIII. PAYMENT

- A. The Contractor shall prepare and submit a monthly expenditure report, as indicated in Appendix E, *Required Reports and Due Dates*, by the 15th of each month to the Agency on Aging, unless otherwise specified by the Agency on Aging. The report shall include all costs and funding sources for the month prior.
- B. The Agency on Aging shall review the Contractor’s report to ensure compliance with the approved Agreement budget.

- C. Depending upon funding availability, the Agency on Aging shall make monthly reimbursement payments to the Contractor as specified in Appendix E, *Required Reports and Due Dates*, of this Agreement. The Agency on Aging shall pay the Contractor a total not to exceed the amount shown on page one (1) of this Agreement.
- D. The Agency on Aging may withhold payment if the Agency on Aging determines that the Agreement with the Contractor is at-risk, as described in Appendix F, *Sanction Policy*.
- E. The Agency on Aging shall be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. Payments made after a decision to withhold funds or terminate the Agreement will be governed by Article XVII, *Termination*.
- F. The Agency on Aging may require financial reports more frequently than indicated in Section A of this Article or more detail (or both), upon written notice to the Contractor, until such time as the Agency on Aging determines that the financial management standards are met.
- G. Closeout
 - 1. Contractor is required to submit the *Financial Closeout Report* for this Agreement and *Fixed Assets Acquired through Grants with the Fresno-Madera Area Agency on Aging* (FMAAA 32) to the Agency on Aging by July 15, 2024. If Agreement is terminated or cancelled prior to June 30, 2024, the *Financial Closeout Report* and FMAAA 32 shall be submitted to the Agency on Aging within fifteen (15) days of termination or cancellation of the Agreement.
 - 2. Federal funds will be reduced proportionately to maintain the required matching ratios if a Contractor fails to report sufficient match.

ARTICLE IX. SUBCONTRACTS

- A. The Contractor must obtain approval from the Agency on Aging prior to awarding any subcontracts for services contracted in this Agreement.
- B. The Contractor shall not obligate funds for this Agreement in any subcontracts for service beyond the ending date of this Agreement.
- C. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State of California or the Agency on Aging.

- D. The Contractor shall maintain on file copies of subcontracts, memorandums, and/or Letters of Understanding which shall be made available for review at the request of the Agency on Aging.
- E. The Contractor shall require language in all subcontracts to require all subcontractors to comply with all applicable State and federal laws.
- F. The Contractor shall require its subcontractors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, Workers Compensation liabilities, and if appropriate, automobile liability including non-owned automobile and professional liability, and further, the Contractor shall require all of its subcontractors to hold the Contractor harmless. The subcontractor's Certificate of Insurance for general and automobile liability shall also name the Contractor, not the Agency on Aging, as the certificate holder and additional insured. The Contractor shall maintain Certificates of Insurance for all of its subcontractors.
- G. The Contractor shall require language in all subcontracts to require all subcontractors to indemnify, defend, and save harmless the Agency on Aging, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Agreement were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the subcontractor(s) in the performance of this Agreement.
- H. The Contractor shall ensure that the subcontractor will complete all reporting and expenditure documents requested by the Agency on Aging. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by the Agency on Aging.
- I. The Contractor shall require all subcontractors to maintain adequate staff to meet the subcontractor's agreement with the Contractor. This staff shall be available to the California Department of Aging and the Agency on Aging for training and meetings, which the California Department of Aging or the Agency on Aging may find necessary from time to time.
- J. If a private non-profit corporation, the subcontractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

ARTICLE X. RECORDS AND REPORTS

A. Records

1. The Contractor shall maintain complete records which shall include, but not be limited to, accounting records, contracts, agreements, a reconciliation of the *Financial Closeout Report* to the audited financial statements, and a summary worksheet identifying the results of performing audit resolution of its subcontractors in accordance with Article XIV, *Audit Requirements*, of this Agreement. This includes the following: Letters of agreement, insurance documentation, Memorandums and/or Letters of Understanding, patient or client records, and electronic files of its activities and expenditures hereunder in a form satisfactory to the Agency on Aging. All records pertaining this Agreement must be made available for inspection and audit by the Agency on Aging or its duly authorized agents, at any time during normal business hours.
2. All such records, including confidential records, must be maintained and made available by the Contractor as follows:
 - a. Until an audit of the July 1, 2023 through June 30, 2024 period of expenditures has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Agency on Aging or the California Department of Aging's Audit and Risk Management Branch;
 - b. For such longer period, if any, as is required by applicable statute, by any other clause of this Agreement, or by Sections 3 and 4 of this Article; and
 - c. For such longer period as the Agency on Aging or the State deems necessary.
3. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as in Sections A.2.a through A.2.c of this Article. The Contractor shall ensure that any resource directories and all client records remain the property of the Agency on Aging upon termination of this Agreement, and are returned to the Agency on Aging or transferred to another Contractor as instructed by the Agency on Aging.
4. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, such records shall be maintained and kept available until every action has been cleared to the satisfaction of the Agency on Aging and the State and so stated in writing to the Contractor.

5. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by the Agency on Aging under this Agreement. Source documentation includes, but is not limited to; vendor invoices, bank statements, cancelled checks, bank/credit card statements, contracts and agreements, employee time sheets, purchase orders, indirect cost allocation plans.
6. After the authorized period has expired, confidential records shall be destroyed by shredding and disposed of in a manner that will maintain confidentiality.

B. Reports

1. The Contractor shall prepare and submit fiscal and performance reports as designated in Appendix E, *Required Reports and Due Dates*. Reports shall be submitted on forms in a format approved by the Agency on Aging.
2. The Contractor shall assure that all fiscal and program data submitted to the Agency on Aging are timely, complete, accurate, and verifiable.
3. If supporting documentation is required as stated in Article XIV, *Audit Requirements*, all such documentation must accompany the monthly expenditure report.
4. All Program Income received by the Contractor shall be included on the monthly expenditure report, and expenditures supported by Program Income shall be stated in the appropriate column. Program Income shall be tracked on a “first in-first out” method. Unspent Program Income shall not exceed the equivalent of thirty (30) days average Program Income.
5. The Contractor shall cross-train staff on program data collection and reporting requirements in the event of planned or unplanned prolonged absences to ensure timely and accurate submission of data.

ARTICLE XI. PROPERTY

- A. Unless otherwise provided for in this Article, property refers to all assets used in operation of this Agreement. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, intangibles, etc. Property does not include consumable office supplies such as paper, pencils, toner cartridges, file folders, etc.

- B. Property acquired under this Agreement, which meets any of the following criteria, is subject to the reporting requirements:
 - 1. Has a normal useful life of at least one (1) year and has a unit acquisition cost of at least \$500 (a desktop or laptop setup is considered a unit, if purchased as a unit).
 - 2. All computing devices, regardless of cost (including, but not limited to, workstations, servers, laptops, personal digital assistants, notebook computers, tablets, smartphones, and cellphones).
 - a. Purchase and use of portable electronic storage media (including, but not limited to jump drives, thumb drives, and flash drives; portable hard drives; and CDs, DVDs, and other discs) is not allowed under this Agreement.
- C. Intangibles are property which lack physical substance but give valuable rights to the owner. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.). Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.
- D. Equipment/Property with per unit cost over \$500 or any computing devices, regardless of cost, requires justification from the Contractor and approval from the California Department of Aging. The Contractor must submit a detailed listing of planned Equipment/Property purchases in its budget to the Agency on Aging (*Schedule of Program/Site Supplies and Equipment Purchases*, page 4 of Exhibit B, *Budget*). Please note an approved budget is not approval for equipment purchases. The Agency on Aging will notify the Contractor when the California Department of Aging has rendered an approval decision.
- E. The Contractor shall report property acquired with funds provided under this Agreement to the Agency on Aging:
 - 1. Title III B, Title III C, and Title VII (b): On the Monthly Report of Expenditures and Donations Revenue for the month in which the property was acquired.
 - 2. Title III E: On the Title III E Monthly Report of Expenditures (for the Family Caregiver Support Program) for the month in which the property was acquired.

3. Long-Term Care Ombudsman Program: On the Budget Summary/Monthly Expenditure Report and Request for Funds, Special Deposit Fund (SDF) & Skilled Nursing Facility Quality & Accountability Fund (SNFQAF) (CDA-OMB-300) for the month in which the property was acquired.
-
- F. The Contractor shall attach receipts for the property and a list of the following information for each item of property acquired: Date acquired; complete description; model number; serial number (if applicable); cost or other basis of valuation; fund source; and specific location of the property.
 - G. The Contractor shall maintain a cumulative inventory, including the Asset Tag number and all information required by Section F of this Article, of all property furnished or purchased by the Contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose.
 - H. The Contractor shall affix the Asset Tag provided by the Agency on Aging to tangible property upon receipt of the asset tag from the agency, which identifies the property as State of California property. The Contractor shall enter the Asset Tag number on the cumulative inventory records maintained by the Contractor for this Agreement.
 - I. The Contractor shall conduct an annual physical inventory of all property furnished or purchased by the Contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose, and submit *Fixed Assets Acquired through Grants with the Fresno-Madera Area Agency on Aging* (FMAAA 32) with the annual Financial Closeout Report to the Agency on Aging. Corresponding reconciliation must be kept on file and available for review by the Agency on Aging.
 - J. Prior to disposal of any property purchased by the Contractor with funds from this Agreement or any predecessor Agreement, the Contractor must obtain approval from the California Department of Aging, through the Agency on Aging, for all reportable property as defined in Section B of this Article. The Contractor shall submit a *Request to Dispose of Property* (FMAAA 248) to the Agency on Aging to request disposal of property.

Disposition, which includes sale, trade-in, discarding, or transfer to another agency, may not occur until approval is provided by the California Department of Aging and the Agency on Aging notifies the Contractor of the State's instructions for disposition of property.

Property is not to be disposed of until both the CDA 248 and STD 152 have been approved by CDA. Contractor will be liable for repayment of purchase price of equipment if Contractor disposes of equipment without prior approval from CDA.

Once property has been disposed as per the State's authorization and instructions, the item(s) shall be removed from the Contractor's inventory report.

- K. The Contractor must sanitize property (remove all confidential, sensitive, or personal information) prior to disposal, including removal or destruction of data on computing devices with digital memory and storage capacity. This includes, but is not limited to, magnetic tapes, personal computers, personal digital assistants, cell or smart phones, multi-function printers, and laptops. The Contractor must attach documentation of sanitation of such devices to the *Request to Dispose of Property* (FMAAA 248) requesting property disposal.
- L. Any loss, damage, or theft of equipment shall be investigated and fully documented, and the Contractor shall promptly notify the Agency on Aging and shall provide copies of investigative documentation and police reports as requested by the Agency on Aging or the CDA. In addition, the Contractor shall complete a *Request to Dispose of Property* (FMAAA 248) and provide it to the Agency on Aging.
- M. The State reserves title to all property purchased or financed with funds provided through the Agency on Aging that is not fully consumed in the performance of this Agreement, including property acquired with grant funds, matching funds, monetary donations, and in-kind donations as entered on the budget, budget revisions, and/or closeout report for this Agreement, unless otherwise required by federal law or regulations.
- N. The Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such personal property during the period of the project and until the Contractor has complied with all written instructions from the Agency on Aging regarding the final disposition of the property.
- O. In the event of the Contractor's dissolution, or upon termination of this Agreement, the Contractor shall provide a final property inventory to the Agency on Aging. The Agency on Aging reserves the right to require the Contractor to transfer such property to another entity, or to the Agency on Aging.

- P. The Contractor shall use the property for the purpose for which it was intended under this Agreement.
- Q. The Contractor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- R. The Contractor shall include the provisions contained in this Article in all its subcontracts awarded under this Agreement.

ARTICLE XII. ACCESS

- A. The Contractor shall provide access to the Agency on Aging, federal or State contracting agency, Bureau of State Audits, the Comptroller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, and records of the Contractor or subcontractor which are directly pertinent to this specific Agreement for the purpose of an audit, examination, excerpts, and transcriptions. The Contractor shall include this requirement in its subcontracts.

ARTICLE XIII. MONITORING AND EVALUATION

- A. Authorized State representatives and the Agency on Aging shall have the right to monitor and evaluate the Contractor's administrative, fiscal and program performance pursuant to this Agreement. Said monitoring and evaluation may include, but is not limited to, administrative processes, fiscal, data and procurement components. This will include policies, procedures, procurement, audits, inspections of project premises, interviews of project staff and participants, and when applicable, inspection of food preparation sites.
- B. The Contractor shall cooperate with the State and the Agency on Aging in the monitoring and evaluation processes, which include making any administrative, program and fiscal staff available during any scheduled process.
- C. The Contractor shall monitor contracts and subcontracts to ensure compliance with laws, regulations, and the provisions of contracts that may have a direct and/or material effect on each of its Agency on Aging funded programs.
- D. The Contractor is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts, monitoring reports, and all other pertinent records until an audit has

occurred and an audit resolution has been issued or unless otherwise authorized in writing by CDA or the Agency on Aging.

ARTICLE XIV. AUDIT REQUIREMENTS

A. General

1. Any duly authorized representative of the federal or State government, which includes but is not limited to the State Auditor, CDA Staff, the Agency on Aging, and any entity selected by the State to perform inspections, shall have the right to monitor and audit Contractor and all subcontractors providing services under this Agreement through on-site inspections, audits, and other applicable means the State determines necessary. In the event that CDA is informed of an audit by an outside federal or State government entity affecting the Contractor, CDA and/or the Agency on Aging will provide timely notice to the Contractor.
2. Contractor shall make available all reasonable information necessary to substantiate that expenditures under this agreement are allowable and allocable, including, but not limited to accounting records, vendor invoices, bank statements, cancelled checks, bank/credit card statements, contracts and agreements, employee time sheets, purchase orders, indirect cost allocation plans. Contractor shall agree to make such information available to the federal government, the State, the Agency on Aging, or any of their duly authorized representatives, including representatives of the entity selected by State to perform inspections, for examination, copying, or mechanical reproduction, on or off the premises of the appropriate entity upon a reasonable request.
3. All agreements entered into by Contractor and subcontractors with audit firms for purposes of conducting independent audits under this Agreement shall contain a clause permitting any duly authorized representative of the federal or State government and the Agency on Aging access to the supporting documentation of said audit firm(s).
4. The Contractor shall cooperate with and participate in any further audits which may be required by the State, including CDA and Agency on Aging fiscal and compliance audits.

B. CDA Fiscal and Compliance Audits

1. The CDA Audits and Risk Management Branch shall perform fiscal and compliance audits of Contractors in accordance with Generally Accepted Government Auditing Standards (GAGAS) to ensure

compliance with applicable laws, regulations, grants, and contract requirements.

2. The CDA fiscal and compliance audits may include, but not be limited to, a review of:
 - a. Financial closeouts (2 CFR §200.1 and 45 CFR §75.2).
 - b. Internal controls (2 CFR §200.303 and 45 CFR §75.303).
 - c. Allocation of expenditures (2 CFR §200.1 and 45 CFR §75.2).
 - d. Allowability of expenditures (2 CFR §200.403 and 45 CFR §75.403).
 - e. Equipment expenditures and approvals, if required (2 CFR §200.439 and 45 CFR §75.439).

C. Contractor Single Audit Reporting Requirements

1. Contractors that expend \$750,000 or more in federal funds shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502; the Single Audit Act Amendments of 1996, Public Law 104-156; 2 CFR §200.501 to 200.521; and 45 CFR §75.501 to 75.521. A copy shall be submitted to the Agency on Aging's mailing address:

Fresno-Madera Area Agency on Aging
2037 West Bullard Avenue #512
Fresno, California 93711

2. The copy shall be submitted within thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period, whichever occurs first, or unless a longer period is agreed to in advance by the cognizant or oversight agency.
3. For purposes of reporting, the Contractor shall ensure that State-funded expenditures are displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" (SEFA) under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced in Section L of this Article.

4. For State contracts that do not have CFDA numbers, the Contractor shall ensure that the State-funded expenditures are discretely identified in the “Schedule of Expenditures of Federal Awards” by the appropriate program name, identifying Agency on Aging grant/contract number, and as passed-through the California Department of Aging.
- D. The Contractor shall perform a reconciliation of the “Financial Closeout Report” to the audited financial statements, single audit, and general ledgers. The reconciliation shall be maintained and made available for CDA review.
 - E. Contractor Resolution of Contractor’s Subrecipients
The Contractor shall have the responsibility for resolving its contracts with subcontractors to determine whether funds approved under this Agreement are expended in accordance with applicable laws, regulations, and provisions of contracts or agreements. The Contractor shall, at a minimum, perform Contract Resolution with fifteen (15) months of the “Financial Closeout Report.”
 - F. The Contractor shall ensure that subcontractor single audit reports meet 2 CFR §200 and 45 CFR §75, Subparts F-Audit Requirements.
 - G. Contract resolution includes:
 1. Ensuring that subcontractors expending \$750,000 or more in federal awards during the subcontractor’s fiscal year have met the audit requirements of 2 CFR §200.501-200.521 and 45 CFR §75.501-75.521.
 2. Issuing a management decision on audit findings within six (6) months after receipt of the subcontractor’s single audit report and ensuring that the subcontractor takes appropriate and timely corrective action;
 3. Reconciling expenditures reported to the Agency on Aging to the amounts identified in the single audit or other type of audit, if the Contractor was not subject to the single audit requirements. For a Contractor who was not required to obtain a single audit and did not obtain another type of audit, the reconciliation of expenditures reported to the Agency on Aging must be accomplished through performing alternative procedures (e.g., risk assessment [2 CFR §200.331 and 45 CFR §75.352]; documented review of financial statements; and documented expense verification, including match; etc.).

- H. When alternative procedures are used, the Contractor shall perform financial management system testing which provides, in part, for the following:
1. Accurate, current, and complete disclosure of the financial results of each federal award or program.
 2. Records that identify adequately the source and application of funds for each federally funded activity.
 3. Effective control over, and accountability for, all funds, property, and other assets to ensure these items are used solely for authorized purposes.
 4. Comparison of expenditures with budget amounts for each federal award.
 5. Written procedures to implement the requirements of 2 CFR §200.305 and 45 CFR §75.305.
 6. Written procedures for determining the allowability of costs in accordance with 2 CFR §200 and 45 CFR §75, Subparts E-Cost Principles. [2 CFR §200.302 and 45 CFR §75.302]
 7. The Contractor shall document system and expense testing to show an acceptable level of reliability, including a review of actual source documents.
 8. Determining whether the results of the reconciliations performed necessitate adjustment of the Contractor's own records.
- I. The Contractor shall ensure that subcontractor single audit reports meet 2 CFR §200 and 45 CFR §75, Subparts F – Audit Requirements:
1. Performed timely: Not less frequently than annually and a report submitted timely. The audit is required to be submitted within thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period, whichever occurs first. [2 CFR §200.512 and 45 CFR §75.512]
 2. Properly procured: Use procurement standards for auditor selection. [2 CFR §200.509 and 45 CFR §75.509]
 3. Performed in accordance with Generally Accepted Government Auditing Standards. [2 CFR §200.514 and 45 CFR §75.514]

4. All inclusive: Includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts; and the schedule of findings and questioned costs. [2 CFR §200.515 and 45 CFR §75.515]
 5. Performed in accordance with provisions applicable to this program as identified in 2 CFR §200, and 45 CFR §75, Subpart F-Audit Requirements.
- J. Requirements identified in this Article shall be included in Contractor's contracts with Subcontractors. Further, the Contractor shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements/standards.
- K. A reasonably proportionate share of the costs of audits required by, and performed in accordance with the Single Audit Act Amendments of 1996, as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:
1. Any costs when audits required by the Single Audit Act, 2 CFR §200 and 45 CFR §75, Subparts F – Audit Requirements have not been conducted or have been conducted but not in accordance therewith; and
 2. Any costs of auditing a non-federal entity that is exempted from having an audit conducted under the Single Audit Act, 2 CFR §200 and 45 CFR §75, Subparts F – Audit Requirements because its expenditures under federal awards are less than \$750,000 during the non-federal entity's fiscal year.
 - a. The costs of a financial statement audit of a non-federal entity that does not currently have a federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.
 - b. Pass-through entities may charge federal awards for the cost of agreed-upon-procedures engagements to monitor subcontractors who are exempted from the requirements of the Single Audit Act, 2 CFR §200 and 45 CFR §75, Subparts F – Audit Requirements. This cost is allowable only if the agreed-upon-procedures engagements are conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) attestation standards, paid for and arranged by the pass-through entity, and limited in scope to one or more of the following types of compliance requirements: Activities allowed or

not allowed; allowable costs/cost principles; eligibility; and reporting.

L. This Section B applies only to Title III and Title VII.

The following closely related programs identified by CFDA number are to be considered as an “other cluster” for purposes of determining major programs or whether a program-specific audit may be elected. The Contractor shall identify the CFDA titles and numbers to the independent auditor conducting the organization’s single audit along with each of its subcontractors. The funding source (Federal Grantor) for the following programs is the U.S. Department of Health and Human Services, Administration for Community Living.

- 93.042 American Rescue Plan, 2021, Long-Term Care Ombudsman Older Americans Act Title VII Ombudsman
- 93.043 American Rescue Plan, 2021, Preventative Health Older Americans Act Title III-D
- 93.044 American Rescue Plan, 2021, Supportive Services Older Americans Act Title III-B
- 93.045 American Rescue Plan, 2021, Congregate Meals Older Americans Act Title III-C1
- 93.045 American Rescue Plan, 2021, Home Delivered Meals Older Americans Act Title III-C2
- 93.052 American Rescue Plan, 2021, Family Caregivers Older Americans Act Title III-E

“Cluster of programs” means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development, student financial aid, and other clusters. “Other clusters” are defined by the consolidated CFR in the Compliance Supplement or as designated by a state for federal awards provided to its subcontractors that meet the definition of “cluster of programs.” When designating an “other cluster,” a state shall identify the federal awards included in the cluster and advise the subcontractors of compliance requirements applicable to the cluster. A “cluster of programs” shall be considered as one program for determining major programs, as described in 45 CFR §75.525(a), whether a program-specific audit may be elected. (Federal Office of Management and Budget, [45 CFR §75 Requirements], Audits of States, Local Governments [45 CFR §75

Appendix V to Part 75 F.1], and Non-Profit Organizations [45 CFR §75 Appendix IV to Part 75 C.2.a)]

- M. The Contractor shall indicate which method of providing audit compliance will be in force during this Agreement (Appendix D, *Method of Providing Audit Compliance*).

ARTICLE XV. INSURANCE

- A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:
1. **General Liability** of not less than \$1,000,000 per occurrence for bodily injury and property damage combined (higher limits may be required by the Agency on Aging in cases of higher than usual risks).
 2. **Automobile Liability, including non-owned automobile liability**, of not less than \$1,000,000 for volunteers and paid employees providing services supported by this Agreement. If applicable, the Contractor and subcontractors shall comply with the Public Utilities Commission General Order No. 115-G which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:
 - \$ 750,000 if seating capacity is under 8.
 - \$1,500,000 if seating capacity is 8–15.
 - \$5,000,000 if seating capacity is over 15.
 3. **Professional Liability** of not less than \$1,000,000 as it appropriately relates to services rendered. Coverage shall include errors and omissions.
- B. The insurance will be obtained from an insurance company acceptable to the State Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.
- C. Evidence of insurance shall be in a form and content acceptable to the State Department of General Services, Office of Risk and Insurance Management.
- D. The Contractor shall notify the Agency on Aging within five (5) business days of any cancellation, non-renewal, or material change that affects required insurance coverage.

E. Insurance obtained through commercial carriers shall meet the following requirements:

1. **The Certificate of Insurance shall include the Contract Number listed on page 1 of this Agreement and provide the statement:**

“The Fresno-Madera Area Agency on Aging, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the Fresno-Madera Area Agency on Aging under this Agreement.”

Professional Liability coverage is exempt from this requirement.

2. **The Fresno-Madera Area Agency on Aging shall be named as the certificate holder and its mailing address (2037 West Bullard Avenue, #512, Fresno, CA 93711) must be listed on the certificate.**

F. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide the Agency on Aging, at least thirty (30) days prior to the expiration date, a new Certificate of Insurance evidencing insurance coverage as provided herein for a period not less than the remaining Agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, the Agency on Aging may, in addition to any other remedies it may have, terminate this Agreement.

G. A copy of each appropriate Certificate of Insurance, or letter of self-insurance, referencing this Agreement number shall be submitted to the Agency on Aging with this Agreement.

H. The Contractor shall be insured against liability for Worker's Compensation or undertake self-insurance in accordance with the provisions of the Labor Code and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. [Labor Code §3700]

I. The entity providing Ombudsman services must be insured or self-insured for professional liability covering all Ombudsman activities including, but not limited to, investigation of patient complaints.

J. Contractor agrees to indemnify, defend, and save harmless the Fresno-Madera Area Agency on Aging, State of California, their officers, agents, and employees from any and all claims and losses occurring or resulting

to any and all Contractors, subcontractors, material, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and also from any and all claims and losses occurring or resulting in any person, firm or corporation, who may be injured or damaged by Contractor in the performance of this Agreement.

ARTICLE XVI. VOLUNTARY CONTRIBUTIONS

- A. The Contractor assures that voluntary contributions shall be allowed and may be solicited in accordance with the following requirements [OAA §315(b)]:
1. The Contractor or any subcontractors for any Title III or Title VII-A services shall not use means tests.
 2. Any Title III or Title VII-A client who does not contribute toward the cost of the services received shall not be denied services.
 3. Methods used to solicit voluntary contributions for Title III and Title VII-A services shall be non-coercive. Voluntary Contribution letters sent to clients shall stipulate that contributions are voluntary and not required to receive service. Voluntary Contribution letters may not resemble a bill or statement.
 4. Each Contractor will:
 - a. Provide each recipient with an opportunity to voluntarily contribute to the cost of the service;
 - b. Clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;
 - c. Protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; and
 - d. Establish appropriate procedures to safeguard and account for all contributions.
 - e. Use all collected contributions to expand the services for which the contributions were given and to supplement (not supplant) funds received under this Agreement.

ARTICLE XVII. TERMINATION

A. Termination Without Cause

1. The Agency on Aging may terminate performance of work under this Agreement at any time during the Agreement term, without cause in whole or in part, if the Agency on Aging determines that a termination is in the Agency on Aging's best interest, upon ninety (90) days written notice to the Contractor. The Notice of Termination shall specify the extent of the termination and shall be effective ninety (90) days from the delivery of the Notice.

The parties agree that if the termination of the contract is due to a reduction or deletion of funding by the State of California, the Legislature, or Congress, the Notice of Termination shall be effective thirty (30) days from the delivery of the Notice.

The parties agree that for the terminated portion of the Agreement, the remainder of Agreement shall be deemed to remain in effect and is not void.

2. The Contractor may terminate this Agreement at any time during the Agreement term by giving the Agency on Aging ninety (90) days written notice. In the event of termination notice, the Agency on Aging will present written notice to the Contractor of any condition, such as, but not limited to, transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination of the Agreement.
3. Contractor shall, at least ninety (90) days prior to the end of the term of this Agreement, give written notice to the Agency on Aging if it intends to discontinue provision of any programs or services included in this Agreement during the subsequent Agreement period. The purpose of this requirement is to provide sufficient planning and transition time during the course of this Agreement period to ensure continuity of services to clients.

B. Termination for Cause

1. The Agency on Aging may terminate, in whole or in part, for cause the performance of work under this Agreement. The grounds for termination for cause shall include, but are not limited to, the following:
 - a. In case of threat of life, health, or safety to the public.

- b. A violation of the law or failure to comply with any condition of this Agreement.
 - c. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
 - d. Failure to comply with reporting requirements.
 - e. Evidence that the Contractor is in an unsatisfactory financial condition as determined by an audit of the Agency on Aging or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources.
 - f. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.
 - g. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor.
 - h. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income.
 - i. The commission of an act of bankruptcy.
 - j. Finding of debarment or suspension.
 - k. The Contractor's organizational structure has materially changed.
 - l. The Agency on Aging determines that the Contractor may be considered a "high risk" agency as described in 45 CFR §92.12 and 45 CFR §75.205. If such a determination is made, the Contractor may be subject to special conditions or restrictions, as described in Appendix F, *Sanction Policy*.
 - m. Program operations have been suspended for more than three (3) consecutive months in any budget year, unless a longer period is granted in writing by the Agency on Aging.
2. Termination of this Agreement shall take effect immediately in the case of an emergency, such as threat to life, health, or safety of the public, or when program operations have been suspended for more than three (3) consecutive months in any budget year. In all other cases of

termination for cause, the termination shall take effect thirty (30) days subsequent to written notice to the Contractor.

3. In the event of termination for cause, the Agency on Aging may proceed with the work in any manner deemed proper by the State. All costs to the Agency on Aging shall be deducted from any sum due the Contractor under this agreement and the balance, if any, shall be paid to the Contractor upon demand.
- C. In the event of termination of this Agreement by the Agency on Aging, the Agency will present written notice to the Contractor describing the action being taken by the Agency on Aging, the reason for such action, and any conditions of the termination, including, but not limited to, the date of termination, transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination. Said notice shall also inform the Contractor of its right to appeal such decision to the Agency on Aging and of the procedure for doing so. (Appendix G, *Appeal Procedure for Service Providers*)
- D. Contractor's Obligation After Notice of Termination
1. After receipt of a notice of termination, and except as directed by the Agency on Aging, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:
 - a. Stop work as specified in the Notice of Termination;
 - b. Place no further subcontracts for materials, or services, except as necessary to complete the continued portion of the contract;
 - c. Terminate all subcontracts to the extent they relate to the work terminated;
 - d. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts (the approval or ratification of which will be final for purposes of this clause); and
 - e. Comply with all additional terms of this Agreement pertaining to termination or cancellation of the Agreement.
- E. This contract will automatically terminate at the end of the one year contract award term, subject however, to an extension otherwise agreed to in writing, or to earlier termination or cancellation as herein provided.

ARTICLE XVIII. REMEDIES AND APPEAL PROCESS

- A. The Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the Agency on Aging as a result of a breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the project. Specifically, the Agency on Aging reserves the right to pursue all remedies allowed to it under the Older Americans Act, and all regulations adopted pursuant to the Act or implementing the Act, regarding the expenditure of federal funds.
- B. The Contractor may appeal an adverse determination by the Agency on Aging using the *Appeal Procedure for Service Providers*, which is set forth in Appendix G, for actions subject to appeal, as defined in Appendix G, Section I.A, *Actions Subject to Appeal*.
- C. The Contractor may appeal the Agency on Aging's final adverse determination once all administrative remedies contained in Appendix G, *Appeal Procedure for Service Providers*, have been exhausted, using the appeal process established in Title 22 CCR §7700 to 7710.
- D. The Contractor shall continue with the responsibilities under this Agreement during any dispute.
- E. Appeal costs or costs associated with any court review are not reimbursable.

ARTICLE XIX. AMENDMENTS, REVISIONS OR MODIFICATIONS

- A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, approved as required by the Agency on Aging amendment process, and signed by a duly authorized representative of the Contractor and of the Agency on Aging. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- B. Should either party during the term of this Agreement desire a revision, waiver or modification in this Agreement, such revision, waiver or modification shall be proposed in writing to the other party. The other party shall accept or reject the proposal within thirty (30) days of receipt of request. Once accepted, such revision may require an amendment through the Agency on Aging's contract process to provide for the change mutually agreed to by the parties.
- C. The Agency on Aging reserves the right to revise, waive, or modify the Agreement to reflect any restrictions, limitations, or conditions enacted by

Congress or the Legislature or as directed by the Executive Branch of State Government.

- D. An amendment is required to change the Contractor's name as listed on this Agreement. Any notice given to the Agency on Aging for a Contractor's change of legal name, main address, or name of Director shall be addressed to the Fresno-Madera Agency on Aging's Executive Director on the Contractor's letterhead. Upon receipt of legal documentation of the name change, the Agency on Aging will process the amendment. Invoices presented by the Contractor with the Contractor's new name cannot be paid prior to the Agency on Aging's approval of said amendment.

ARTICLE XX. NOTICES

- A. Any notice to be given hereunder by either party to the other may be effected by one of the following methods, provided Contractor retains receipt, and shall be communicated as of actual receipt: 1) Registered or certified mail, postage prepaid and return receipt requested; or 2) Overnight mail.
- B. Notices to the Agency on Aging shall be addressed to the Fresno-Madera Area Agency on Aging at its current mailing address, 2037 West Bullard Avenue, #512, Fresno, CA 93711, and notices to the Contractor shall be addressed to the Contractor's address as indicated on page 1 of this Agreement, unless otherwise requested in writing.
- C. Each party may change its address originally provided in this Agreement by written notice to the other party in accordance with this Article.

Appendices Cover Page

- Type entries in highlighted boxes as indicated.
- Appendices are set up for two-sided printing. Blank pages have been inserted where needed to accommodate two-sided printing.
- Print two two-sided sets after typing entries, and obtain original signatures and dates on both sets where indicated.

APPENDIX A **RESOLUTION OF AUTHORIZATION TO CONTRACT**

The governing board of the City of Clovis - Senior Services
 (Service Provider)

hereby authorizes John Holt, City Manager
 (Name and Title)

to execute the contract(s) listed on Page 1 of this Agreement with the Fresno-Madera Area Agency on Aging for the time period of this contract commencing July 1, 2023, and ending June 30, 2024, including any subsequent amendments and all necessary supporting documents.

Lynne Ashbeck

Name of Chair (Please Print)
 Governing Board

 Signature of Chair
 Governing Board

 Date

APPENDIX B

CONTRACTOR CERTIFICATION CLAUSES

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

City of Clovis - Senior Services

Contractor/Vendor Name (Typed)

94-6000311

Federal ID Number

Authorized Signature

Date Executed

John Holt, City Manager

Name and Title of Person Signing (Typed)

CONTRACTOR CERTIFICATION CLAUSES

Source: State of California CCC 04/2017

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any

APPENDIX B

CONTRACTOR CERTIFICATION CLAUSES

future State and Fresno-Madera Area Agency on Aging agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)
4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State and the Fresno-Madera Area Agency on Aging for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
6. SWEATFREE CODE OF CONDUCT:
 - a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
 - b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by

APPENDIX B

CONTRACTOR CERTIFICATION CLAUSES

authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.
8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

APPENDIX B

CONTRACTOR CERTIFICATION CLAUSES

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
 - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

APPENDIX C

INFORMATION INTEGRITY AND SECURITY STATEMENT

CERTIFICATION

I hereby certify that I have reviewed this Confidentiality Statement and will comply with the Statements below.

City of Clovis - Senior Services

Contractor/Vendor Name (Typed)

23-0051ARP

Contract Number

Authorized Signature

Date

John Holt, City Manager

Name and Title of Person Signing (Typed)

In compliance with California Government Code Section 11019.9, California Civil Code Section 1798 et seq., Management Memo 06-12, and Statewide Information Management Manual (SIMM) 5300, the California Department of Aging (CDA) hereby requires the Contractor/Vendor to:

ACKNOWLEDGE:

- Any wrongful access, inspection, use, or disclosure of Personal, Confidential or Sensitive Information (PSCI) is a crime and is prohibited under state and federal laws, including but not limited to California Penal Code Section 502, California Government Code Section 15619, California Civil Code Sections 1798.53 and 1798.55, and the Health Insurance Portability and Accountability Act.
- Any wrongful access, inspection, use, disclosure, or modification of PSCI information may result in termination of this Agreement.

MEET THE FOLLOWING REQUIREMENTS:

- PSCI information shall be protected from disclosure in accordance with all applicable laws, regulations, and policies.
- PSCI data be protected by authorized access using the principles of least privilege.
- Any occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies will immediately be reported to the Fresno-Madera Area Agency on Aging and a

APPENDIX C

INFORMATION INTEGRITY AND SECURITY STATEMENT

Security Incident Report form (CDA 1025A and 1025B) must be submitted to the CDA Information Security Officer, via the Agency on Aging, within five (5) business days of the date the incident was detected.

- All access codes which allow access to confidential information will be properly safeguarded.
- Obligations to protect PSCI information obtained under this Agreement will continue after termination of the Agreement with the Fresno-Madera Area Agency on Aging.
- All employees/subcontractors of the Contractor/Vendor will complete the required Privacy and Information Security Awareness Training module within 30 days of the start date of the Agreement or within 30 days of the start date of any new employee or subcontractor. This training must be completed annually. The training is located online at https://aging.ca.gov/Information_security.
- All employees/subcontractors of the Contractor/Vendor must comply with CDA's confidentiality and data security requirements as outlined in Article V, Section H, Information Integrity and Security, of this Agreement.
- All employees/subcontractors of the Contract/Vendor must comply with the encryption and self-certification requirements as outlined in Article V, Section H, Information Integrity and Security, of this Agreement.

CERTIFY

To protect PSCI information by:

- Accessing, inspecting, using, disclosing or modifying PSCI information only for the purpose of performing official duties.
 - Never accessing, inspecting, using, disclosing, or modifying PSCI information for curiosity, personal gain, or any non-business-related reason.
 - Securing PSCI information in approved locations.
 - Never removing PSCI information from the work site without authorization.
 - Meets the encryption requirements in Article V, Section H, Information Integrity and Security, of this Agreement.
- ☐ Is in full compliance with the 128 Encryption requirements.
- ☐ Is not in compliance with the 128 Encryption requirements and will achieve compliance by the following date: _____, ____', ____'.

APPENDIX D

METHOD OF PROVIDING AUDIT COMPLIANCE

The service provider shall indicate which method of providing audit compliance to the Fresno-Madera Area Agency on Aging (Agency on Aging) will be in force during this Agreement.

1. **Review Article XIV of this Agreement (Audit Requirements).**
2. Place an **X** in the appropriate box below:

- ☒ An independent audit shall be performed in accordance with the requirements of 2 CFR §200, Subpart F - Audit Requirements, and 45 CFR §75, Subpart F - Audit Requirements, and a copy submitted to the Agency on Aging.
- ☐ An independent audit shall be performed and a copy submitted to the Agency on Aging.
- ☐ All supporting documentation shall be submitted to the Agency on Aging for review along with any request for reimbursement.

Enter Fiscal Year Ending Date —→

June	30	2024
Month	Day	Year

APPENDIX E

REQUIRED REPORTS AND DUE DATES

Fiscal Reports

*Expenditure Reports by Program

Title III B, Title III C, Title III D, and Title VII Programs

Due 15th of each month

- Monthly Report of Expenditures and Donations Revenue

Title III E Family Caregiver Support Program

Due 15th of each month

- Title III E Monthly Report of Expenditures

Health Insurance Counseling and Advocacy Program

Due 15th of each month

- HICAP Monthly Report of Expenditure/Request for Funds (CDA 245)

Long-Term Care Ombudsman Program

Due 15th of each month

- Budget Summary/Monthly Expenditure Report & Request for Funds, Special Deposit Fund & Skilled Nursing Facility Quality and Accountability Fund (CDA-OMB-300)

** Payments are made by the last day of the month for accurate expenditure reports received by the due date. Late or inaccurate expenditure report submissions will result in delay of payments until reporting requirements have been met.*

Additional Fiscal Reports – All Programs

- **Final Budget Revisions**
 - o Due by March 15, 2024
- **Annual Financial Close Out Report and FMAAA 32, Fixed Assets Acquired through Grants with the Fresno-Madera Area Agency on Aging**
 - o Due by July 15th with exception of HICAP
 - 1st HICAP Financial Closeout Report for federal funds from July 1-March 31 due by April 30th
 - 2nd HICAP Financial Closeout Report for State funds from July 1-June 30 and Federal funds from April 1-June 30 due by July 30th
- **Copy of Audit**, as required by contract
 - o Due within 30 days after receipt of auditor's report, or nine months after end of audit period, whichever is earliest
- **Request to Dispose of Property (FMAAA 248)**
 - o Due within 5 days of the loss, destruction, or theft of property, or if the property will no longer be used for the contracted program

APPENDIX E

REQUIRED REPORTS AND DUE DATES

Program Reports

Monthly Service Unit Report *(Form 186M)*

Due 7th working day of month:

- **Title III B Adult Day Care**
 - o Attach Q Monthly Service Roster, associated Client Intake Forms, and Client Deactivation Request
- **Title III B Legal Assistance**
- **Title III B Transportation**
- **Title III D Health Promotion**
- **Title VII (b) Elder Abuse Prevention, Education, & Training**

Due 15th of each month:

- **Health Insurance Counseling and Advocacy Program (HICAP)**
 - o Attach final version of HICAP Performance Measures and Benchmark Report generated from SHARP system for reporting month

***Monthly Title III C and ARP Grant Elderly Nutrition Program Reports**

Due 7th working day of month:

- Q Monthly Service Roster with client signatures and a “1” entered for each meal
- Daily Sign-In Sheets with initials entered by client for each meal
- Associated Client Intake Forms (originals; must be completed July 1, 2021 or later)
- Client Deactivation Request
- Nutrition Volunteer Summary Report
- Food Preparation Center Food Service Check Sheet

***See Policy and Procedure Manual, provided to Site Coordinator, for full instructions**

Quarterly Reports

Due 15th of month following reporting period:

- **Title III B California Legal Services** Quarterly Aggregate Report *(CDA 1022) through 4Q FY 21-22.*
- **Title VII (b) Elder Abuse Prevention** Quarterly Activity Report *(CDA 1037)*

Due 30th of month following reporting period:

- **Long-Term Care Ombudsman Program**
 - o Copy of completed Quarterly Ombudsman Reporting Form *(OSLTCO S301)* as submitted to the California Department of Aging
 - Attach program performance data from the Ombudsman Data Integration Network for July 1st through last day of reporting quarter

APPENDIX F

FRESNO-MADERA AREA AGENCY ON AGING SANCTION POLICY

I. At-Risk Designation

Title 45 of the Code of Federal Regulations (45 CFR), sections 74.14 and 92.12, defines factors that determine if an Agreement with a Contractor is at risk. In accordance with 45 CFR, the Fresno-Madera Area Agency on Aging (Agency on Aging) may consider an Agreement with a Contractor to be at-risk if the Agency on Aging determines that the Contractor:

- A. Has a history of unsatisfactory performance, for which examples include, but are not limited to:
 - 1. Grant funds are not obligated properly, are not disbursed, or are not spent for the contracted purpose;
 - 2. Financial reports do not include program income and the required match of funds;
 - 3. The quantity of service units provided is less than 95% of the projected level at any time following the third month of the Agreement period;
 - 4. The Targeting Plan is not implemented as described in the Program Narrative section of the Agreement;
 - 5. Complaints received from clients, their caretakers, or the general public indicate that the Contractor is not providing the contracted service at a satisfactory level.
- B. Is not financially stable;
- C. Has a management system which does not meet the management standards set forth in Article VI, Section B, *Accountability for Funds*, of this Agreement;
- D. Has not conformed to terms and conditions of previous awards; or
- E. Is otherwise not responsible, for which examples include, but are not limited, to:
 - 1. Financial or program reports are late, incorrect, or incomplete;
 - 2. Responses to corrective actions requested by the Agency on Aging are not provided by the due date;
 - 3. Corrective action plans are not implemented by the due date;
 - 4. Findings from a prior contract monitoring are repeated in a subsequent monitoring;

5. Failure to respond to telephone or written communications from the Agency on Aging in a timely manner; or
6. A violation of the law or failure to comply with any condition of this Agreement.

II. Sanctions

The Agency on Aging may impose sanctions (special conditions and/or restrictions) on the Contractor that correspond to the at-risk condition. Such sanctions may include:

- A. Withholding of funds;
- B. Requiring additional, more detailed, and/or more frequent financial and/or program reports;
- C. Requiring preparation and implementation of an acceptable corrective action plan;
- D. Additional contract monitoring;
- E. Requiring the Contractor to obtain technical or management assistance;
- F. Establishing additional prior approvals; and/or
- G. Withholding authority to continue provision of service within a given funding period.

Sanctions may be imposed upon approval by the Executive Director of the Agency on Aging, with the exception of Item II.G above, which requires approval by the Agency on Aging Governing Board.

For sanctions identified in Items II.A through II.F above, the Agency on Aging will promptly remove sanctions once the conditions that prompted them have been corrected.

For the sanction identified in Item II.G above, the sanction will be removed when the Contractor takes corrective action satisfactory to the Agency on Aging and/or the Contractor has been restored to satisfactory status in accordance with the terms and conditions of this Agreement.

III. Notification to Provider

The Agency on Aging will provide written notification to the Contractor of any sanctions imposed via certified or overnight mail, return receipt requested. Such notification will include:

- A. The nature of the sanctions;
- B. The reason(s) for imposing them;
- C. The effective date of the sanctions;
- D. The legal or contractual citation upon which the sanction is based;
- E. The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and
- F. The Agency on Aging's appeal procedure for service providers.

IV. Unresolved At-Risk Condition(s)

Should the at-risk condition(s) remain unresolved following the imposition of sanctions, the Agency on Aging may proceed to terminate the Agreement with the Contractor, in accordance with the *Termination* section of this Agreement (Article XVII, Title III and Title VI Area Plan Contracts; Article XVI, Health Insurance Counseling and Advocacy Program Contract).

APPENDIX G

FRESNO-MADERA AREA AGENCY ON AGING APPEAL PROCEDURE FOR SERVICE PROVIDERS

I. Actions Subject to Appeal

- A. A contracted or potential provider of service (service provider) has the right to appeal an adverse determination made by the Fresno-Madera Area Agency on Aging (Agency on Aging). The actions below shall be considered adverse determinations that are subject to appeal [Title 22 CCR §7704 (c)(1) – (c)(3)(C)]:
1. A reduction in the level of funding to an existing Contractor during an Agreement period; however, a reduction directly attributable to a reduction in the funding to the Area Agency on Aging by the State or federal government shall not be considered an adverse determination.
 2. A cancellation or termination of an existing Agreement with the Contractor prior to the Agreement's expiration date.
 3. Denial of an application to provide services when any of the following exist:
 - a) The presence of a conflict of interest, real or apparent, as specified in 45 CFR 92.36(b)(3);
 - b) The occurrence of a procedural error or omission, such as the failure of the Agency on Aging to include a federal mandate in its solicitation request;
 - c) The lack of substantial evidence to support the Agency on Aging's action.

II. Method of Notification

- A. The service provider shall provide notification of appeals, and the Agency on Aging shall provide notification of subsequent appeals determinations, by certified or overnight mail, return receipt requested, or by personal delivery in writing.
- B. Notices to the Agency on Aging shall be addressed to the Fresno-Madera Area Agency on Aging, 2037 W. Bullard Ave., #512, Fresno, CA 93711.

- C. The Agency on Aging shall transmit notification to the address listed on the service provider's appeal; if this address differs from the address listed on page 1 of the service provider's Agreement with the Agency on Aging, the Agency on Aging shall transmit a copy of the notification to the address contained on page 1 of the Agreement.
- D. The Agency on Aging shall include a copy of this Appeal Procedure for Service Providers with all notifications to service providers of adverse appeals determinations.

III. Process

- A. The service provider shall give notice of intent to appeal to the Executive Director of the Agency on Aging within ten (10) business days of the Agency on Aging's notice of adverse determination. The notice of intent to appeal shall be in writing, must state the specific grounds upon which the action by the Agency on Aging is appealed, and must be accompanied by all supporting documents.
- B. The Executive Director of the Agency on Aging shall investigate the appeal and issue a written determination to the service provider within fifteen (15) business days of receipt of the appeal. The determination shall set forth the Agency on Aging's position and specify applicable sections of the service provider's Agreement with the Agency on Aging, government regulations, government statutes, or other provisions relied upon.
- C. If the service provider is dissatisfied with the Agency on Aging Executive Director's determination, the service provider may appeal to the Executive Committee of the Agency on Aging Governing Board within ten (10) business days of the date of the Agency on Aging Executive Director's written determination. The appeal shall be in writing, shall specify the grounds upon which the determination is appealed, and must be accompanied by all supporting documents.
- D. The Executive Committee of the Agency on Aging Governing Board (Executive Committee) shall, within fifteen (15) business days of receipt of the service provider's appeal:
 - 1. Review the service provider's appeal, considering any additional evidence or documentation provided by the Agency on Aging Executive Director;
 - 2. Determine if the appeal should be denied, or if a recommendation should be made to the full Agency on Aging Governing Board at its next scheduled meeting to take action to grant the appeal; and

3. Provide written notification of its determination to the service provider.
- E. If the service provider is dissatisfied with the Executive Committee's determination, the service provider may request a hearing before the full Agency on Aging Governing Board. The service provider must request the hearing within ten (10) business days of the Executive Committee's written notification of determination. The hearing request shall be in writing, shall specify the grounds upon which the determination is appealed, and must be accompanied by all supporting documents.
- F. If the Agency on Aging Governing Board does not accept and implement the Executive Committee's recommendation to grant the service provider's appeal:
1. The Agency on Aging shall provide written notification to the service provider of the Governing Board's decision within two (2) business days following the decision;
 2. The service provider may request a hearing before the Agency on Aging Governing Board. The service provider must request the hearing within ten (10) business days of the date of the notification of the Agency on Aging Governing Board's decision. The hearing request shall be in writing, shall specify the grounds upon which the determination is appealed, and must be accompanied by all supporting documents.
- G. Upon receipt of the service provider's request for a hearing before the Agency on Aging Governing Board, the Agency on Aging will place the hearing on the agenda of the next regularly scheduled meeting of the Agency on Aging Governing Board, and provide the service provider with a copy of the published agenda.
1. The hearing before the Agency on Aging Governing Board shall consist of:
 - a) Receipt and review of all previously submitted documents concerning the appeal;
 - b) Submission in writing by the service provider of any additional information or documentation supporting the service provider's position;
 - c) An oral presentation by the service provider, not to exceed thirty (30) minutes; and

- d) An oral presentation by the Agency on Aging Executive Director and/or Agency on Aging staff, not to exceed thirty (30) minutes.
- 2. At the conclusion of the hearing, the Agency on Aging Governing Board shall vote to accept or deny the service provider's appeal.
 - a) If the appeal is denied, the Agency on Aging Governing Board shall notify the service provider in writing of the reason(s) the appeal was denied, including a statement that all appeal procedures to the Agency on Aging and its Governing Board have been exhausted, and of the service provider's right to appeal the Governing Board's decision to the California Department of Aging. Such notification shall include a copy of Sections 7700 through 7710 of Title 22 of the California Code of Regulations, which contains the process for appealing the determination to the California Department of Aging.

APPENDIX H

FRESNO-MADERA AREA AGENCY ON AGING

2520 WEST SHAW LANE, SUITE 101A, FRESNO CA 93711

MAILING ADDRESS: 2037 WEST BULLARD AVENUE, #512, FRESNO, CA 93711

PROGRAM CONTACT LIST FOR SERVICE PROVIDERS

Telephone Number for All Contacts: (559) 214-0299

Jamie Sharma – Ext. 500
Executive Director

Email : jsharma@fmaaa.org
Fax : (559) 243-5918

Paul Bustamante – Ext. 501
Director of Finance

Email: pbustamante@fmaaa.org
Fax: (559) 243-5918

Vacant– Ext. 401
Finance Manager

Email: Fax: (559)
243-5918

Hillaree Bennett- Ext. 102
Program Director

Email:
hbennett@fmaaa.org
Fax: (559) 243-5918

Stephanie Jenkins – Ext. 203
Nutrition Program Manager

Email: sjenkins@fmaaa.org
Fax: (559) 243-5918

APPENDIX I

FRESNO-MADERA AREA AGENCY ON AGING EMERGENCY CONTACT INFORMATION

Information and Assistance:	(559) 214-0299 (800) 510-2020
-----------------------------	----------------------------------

Executive Director, Emergency Coordinator, and Public Relations Officer	Jamie Sharma
Virtual Office Mailing Address:	2037 W. Bullard Ave. #512 Fresno, CA 93711
Office Phone:	(559) 214-0299

Program Director, Alternate Emergency Coordinator	Hillaree Bennett
Virtual Office Mailing Address:	2037 W. Bullard Ave. #512 Fresno, CA 93711
Office Phone:	(559)319-0863
After Hours Phone:	(559) 308-6267

APPENDIX K

REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Please complete and sign Internal Revenue Service Form W-9, which is provided on the next page.

Please return only the signature page (page 1). Pages 2-6 are provided for your information only.

RESOLUTION 23-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING AN AMENDMENT TO THE FY 2023-2024 GENERAL SERVICES DEPARTMENT BUDGET

The City Council of the City of Clovis resolves as follows:

WHEREAS, the City Council adopted the FY2023-2024 city budget on June 19, 2023;
and,

WHEREAS, additional funding for senior services became available throughout the
year; and,

WHEREAS, these revenues and expenditures were not included in the original adopted
budget; and,

WHEREAS, the additional funds are intended for the senior center.

NOW, THEREFORE BE IT RESOLVED, that the City Council of The City of Clovis hereby
approves the budget amendment as shown in the “Summary of
Expenditures/Revenues by Department” and “Summary of
Expenditures/Revenues by Fund” as Attachment A.

* * * * *

The foregoing Resolution was introduced and adopted at a regular meeting of the City
Council of the City of Clovis held on September 5, 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated: September 5, 2023

Mayor

City Clerk

SUMMARY OF EXPENDITURES BY DEPARTMENT**DEPARTMENT – GENERAL SERVICES**

Senior Services	<u>\$41,000</u>
TOTAL DEPARTMENT	\$41,000
TOTAL ALL DEPARTMENTS	\$41,000

SUMMARY OF EXPENDITURES BY FUND

General Fund	<u>\$41,000</u>
TOTAL FUND	\$41,000

SUMMARY OF REVENUES BY DEPARTMENT**DEPARTMENT – GENERAL SERVICES**

Senior Services	
FMAAA Grant	<u>\$41,000</u>
TOTAL DEPARTMENT	\$41,000

SUMMARY OF REVENUES BY FUND

General Fund	<u>\$41,000</u>
TOTAL FUND	\$41,000



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: September 5, 2023

SUBJECT: Planning and Development Services – Approval – Final Acceptance for CIP 17-21 Well 35 Drilling and Development.

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to accept the work performed as complete and to authorize the recording of the Notice of Completion.

EXECUTIVE SUMMARY

The project consisted of the construction of one new water-well with reverse rotary gravel envelope method at the City of Clovis Well Site No. 35, which is located at 2391 DeWitt Avenue, Clovis, CA 93611, in the northeast corner of DeWitt Avenue and Santa Ana Avenue near the Costco Wholesale store. The project included the development of a new water well, including clearing, grubbing, earthwork, grading, concrete wellhead, concrete drive approach, block wall and gates, salvage and reinstallation of existing trees and shrubs, and modifications to the existing irrigation system.

BACKGROUND

Bids were received on August 23, 2022, and the project was awarded by the City Council to the low bidder, Strickland Enterprises, Inc., on September 12, 2022. The project was completed in accordance with the construction documents and the contractor has submitted a request for acceptance of the project.

FISCAL IMPACT

- | | | |
|----|--|--------------|
| 1. | Award | \$674,737.30 |
| 2. | Cost increases/decreases resulting from differences between estimated quantities used for award and actual quantities installed. | \$18,533.58 |
| 3. | Contract Change Orders | \$0.00 |

Final Contract Cost**\$693,270.88**

This project was budgeted in the 2022-2023 Community Investment Program. The project was funded by the Water Capital – Enterprise fund through the City Community Investment Program.

REASON FOR RECOMMENDATION

The Public Utilities Department, the City Engineer, the Engineering Inspector, and the Project Engineer agree that the work performed by the contractor is in accordance with the project plans and specifications and has been deemed acceptable. The contractor, Strickland Enterprises, Inc. requested final acceptance from the City Council.

ACTIONS FOLLOWING APPROVAL

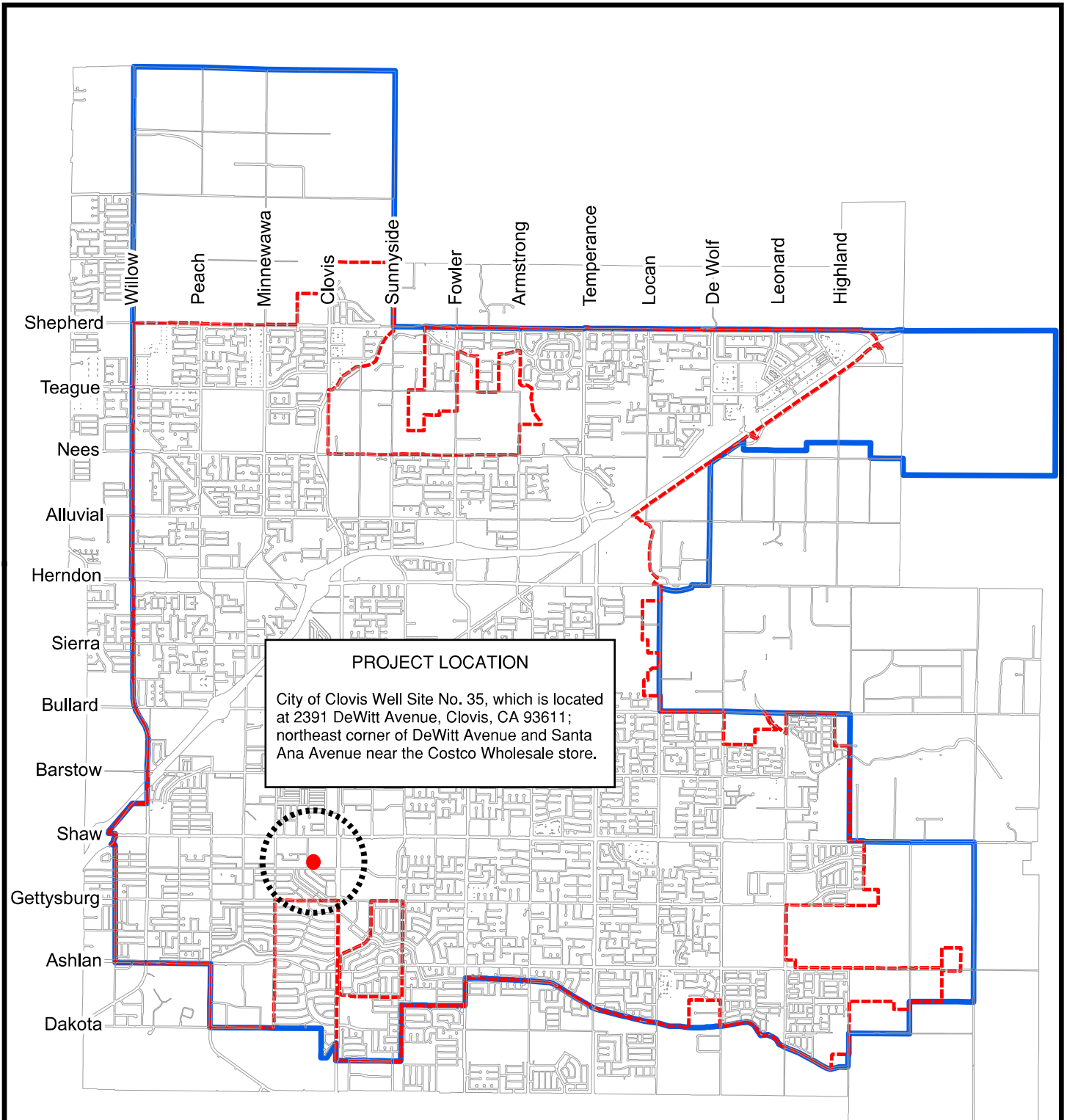
1. The Notice of Completion will be recorded; and
2. All remaining retention funds will be released no later than 35 calendar days following recordation of the notice of completion, provided no liens have been filed. Retention funds may be released within 60 days after the date of completion, provided no liens have been filed, with "completion" defined as the earlier of either (a) beneficial use and occupancy and cessation of labor, or (b) acceptance by the City Council per Public Contract Code Section 7107(c)(2).

Prepared by: Karl Lenhof, Engineering Inspector

Reviewed by: City Manager AK

VICINITY MAP

CIP 17-21 Well 35 Drilling and Development



Attachment 1





CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: September 5, 2023

SUBJECT: Planning and Development Services – Approval – Amend the 2023-2024 Community Investment Program Budget for General Government Facilities, addition of Loma Vista Police Substation in the amount of \$700,000.

ATTACHMENTS: 1. Resolution 23 - ____

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

1. For the City Council to approve a resolution amending the general government services budget in the 2023-2024 Community Investment Program (CIP) to include the Loma Vista Police Substation and authorize expenditures from the general government services fund in the amount of \$700,000.

EXECUTIVE SUMMARY

The Loma Vista Police Substation project is included in the 2023-2024 CIP 5-year budget. Project costs for acquisition and design are shown in the 2024-2025 Fiscal year. Staff would like to move up these elements of the project into the current 2023-2024 fiscal year. The Budget Amendment is needed to financially account for the expenditures and offsetting revenue.

BACKGROUND

The Loma Vista Police Substation is proposed to be located on the property directly to the north of the existing Fire Station 6 site at Loma Vista Parkway and Encino Avenue. The budget amendment includes the cost to purchase the property needed and for the design of the site and building. The funding of the project is supported by previously collected Police Development Impact Fees.

FISCAL IMPACT

This Loma Vista Police Substation project was included in the 2023-2024 Community Investment Program 5-year budget with expenses in the 2024-2025 fiscal year. The budget amendment will move the project expenses and funding to the 2023-2024 fiscal year. The project is supported by General Government Service with previously collected Police Development Impact Fee funding.

REASON FOR RECOMMENDATION

The Budget Amendment is needed to financially account for the expenditures and offsetting revenue in the General Government Services Account for the addition of the Loma Vista Police Substation project.

ACTIONS FOLLOWING APPROVAL

1. Funds will be appropriated and accounted for in the City of Clovis 2023-2024 CIP Budget as specified in the attached budget amendment.

Prepared by: Thad Avery, City Engineer

Reviewed by: City Manager AA

RESOLUTION 23-__

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AN AMENDMENT TO THE FY 2023-2024 CIP BUDGET**

WHEREAS, the City Council adopted the FY2023-2024 City budget on June 19, 2023; and

WHEREAS, the City Council approved the expenditure of funds for the 2023-2024 Community Investment Program – General Government Services Fund; and

WHEREAS, the additional expenditures needed for the Loma Vista Police Substation project were not included in the 2023-2024 Community Investment Program – General Government Services Fund; and

WHEREAS, it has been determined that the funds for the costs can be allocated from the General Government Services fund using previously collected Police Development Impact Fees in the amount of \$700,000.

NOW, THEREFORE, BE IT RESOLVED, that the City of Clovis hereby approves the budget amendment as shown in the “Summary of Expenditures by Section” and the “Summary of Expenditures by Fund” as shown as **Attachment A**.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 5, 2023, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Mayor

City Clerk

Attachment A**SUMMARY OF EXPENDITURES BY SECTION**

General Service Capital Facilities	<u>\$700,000</u>
TOTAL SECTION	\$700,000

SUMMARY OF EXPENDITURES BY FUND

General Government Services	<u>\$700,000</u>
TOTAL FUND	\$700,000



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: September 5, 2023

SUBJECT: Planning and Development Services – Approval – Bid Award for CIP 21-20 Sierra Avenue Street Improvements; and Authorize the City Manager to Execute the Contract on behalf of the City with Dave Christian Construction in the amount of \$1,190,049.00.

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

1. For the City Council to award a contract for CIP 21-20, Sierra Avenue Street Improvements – to Dave Christian Construction, in the amount of \$1,190,049.00; and
2. For the City Council to authorize the City Manager to execute the contract on behalf of the City.

EXECUTIVE SUMMARY

Staff is recommending that the City Council authorize the City Manager to award and execute the contract to Dave Christian Construction, who was the lowest responsible bidder from a bid opening that took place on August 22, 2023.

The project involves 0.6-miles of street rehabilitation on Sierra Avenue from Willow Avenue to Peach Avenue including pulverizing in place the full depth of AC Pavement, replacement of concrete curb returns, adjustment of utility boxes, manholes, and utility valve boxes to finished grade, replacement of traffic striping, markings and signage, traffic signal modification, and reinstallation of traffic loop detectors.

BACKGROUND

The following is a summary of the bids received on August 22, 2023:

BIDDERS BASE BID

Dave Christian Construction	\$1,190,049.00
Central Valley Asphalt	\$1,192,000.00
Cal Valley Construction	\$1,206,909.00
Emmett Valley Construction	\$1,241,865.00
Jim Crawford Construction	\$1,248,672.00
Avison Construction	\$1,309,505.00
Emmetts Excavation	\$1,323,014.00

ENGINEER'S ESTIMATE \$1,091,146.00

FISCAL IMPACT

This project was budgeted in the 2023-2024 Community Investment Program. The project is supported by Measure C through the City Community Investment Program.

REASON FOR RECOMMENDATION

Dave Christian Construction is the lowest responsible bidder. There are sufficient funds available for the anticipated cost of this project.

ACTIONS FOLLOWING APPROVAL

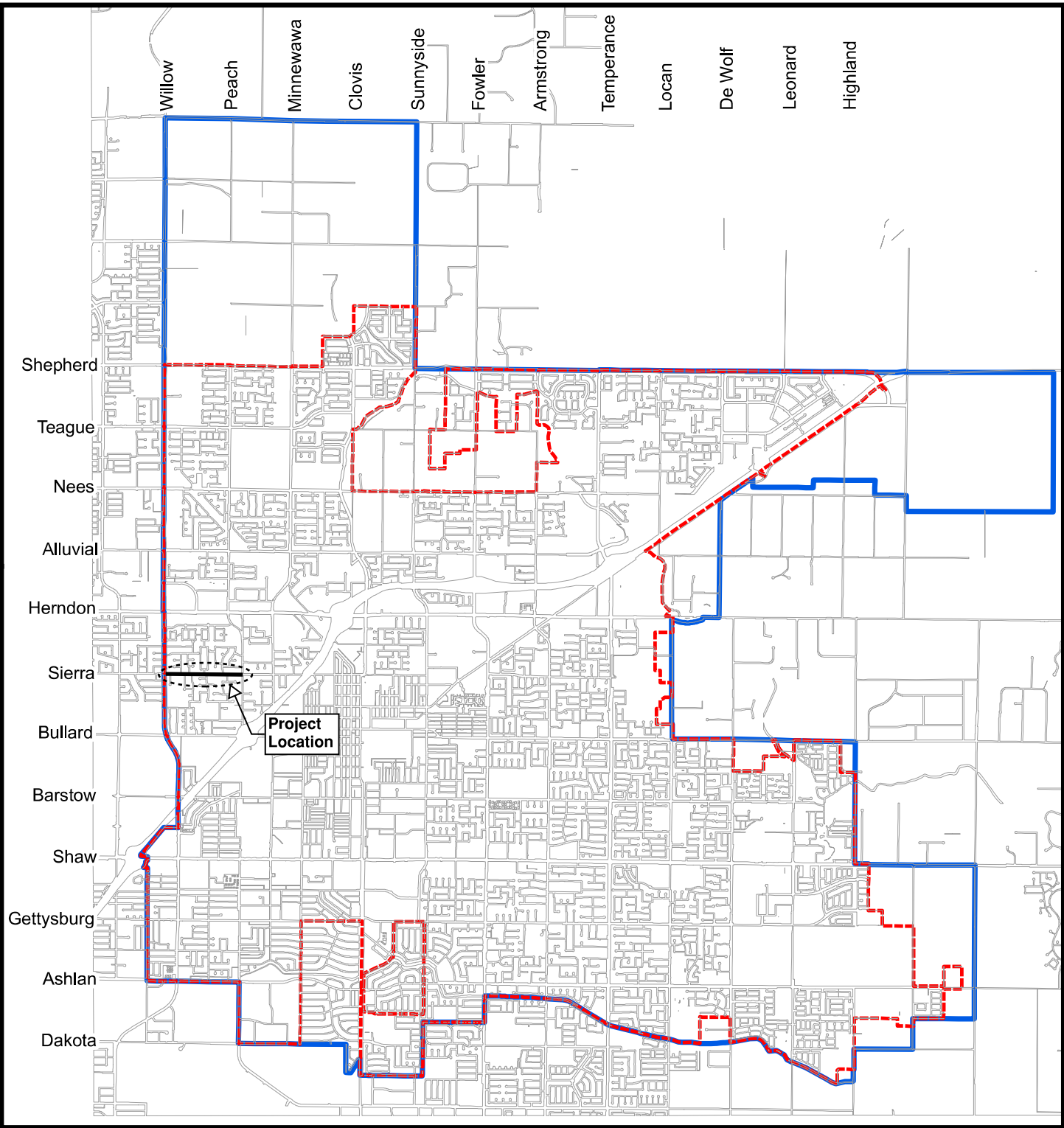
1. The contract will be prepared and executed, subject to the Contractor providing performance security that is satisfactory to the City.
2. Construction will begin approximately two (2) weeks after contract execution and be completed in thirty (30) working days thereafter.

Prepared by: Jacob Redelfs, Project Engineer

Reviewed by: City Manager *AR*

VICINITY MAP

CIP 21-20 Sierra Avenue Street Improvements



Attachment 1





CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: September 5, 2023

SUBJECT: Planning and Development Services – Approval – Final Acceptance for Final Map for Tract 6164, located southwest area of Dakota Avenue and Leonard Avenue (DYP 6164, LP a California Limited Partnership (De Young Properties)).

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

1. Accept the public improvements for Tract 6164, and authorize recording the Notice of Completion; and
2. Authorize the release of the Performance Surety immediately and then release of the Labor and Materials Surety ninety (90) days after the recordation of the Notice of Completion, (provided no lien have been filed) and release of Public Improvements Maintenance Surety upon the expiration of the one-year warranty period and provided any defective work has been repaired to the City's satisfaction.

EXECUTIVE SUMMARY

The owner, DYP 6164, LP a California Limited Partnership (De Young Properties), has requested final acceptance of the public improvements constructed or installed in conjunction with this tract. The public improvements include all those shown on the subdivision improvement plans approved by the City Engineer. The construction or installation of the public improvements is complete. The owner has requested final acceptance. Staff is recommending approval of their request.

All landscaping, including sidewalks along the side yards of lots have been constructed. The construction or installation of the public improvements is complete. The owner has requested final acceptance. Staff is recommending approval of their request.

FISCAL IMPACT

The cost for periodic routine maintenance, as well as repairs needed as the improvements deteriorate with age and usage, will be incorporated to the annual maintenance budget of the Public Utilities Department as these costs are identified.

REASON FOR RECOMMENDATION

The Subdivision Map Act requires that once construction of the required improvements has been completed in compliance with all codes, plans and specifications, and all other required documents have been completed and submitted, final acceptance is required, and the appropriate sureties are released.

ACTIONS FOLLOWING APPROVAL

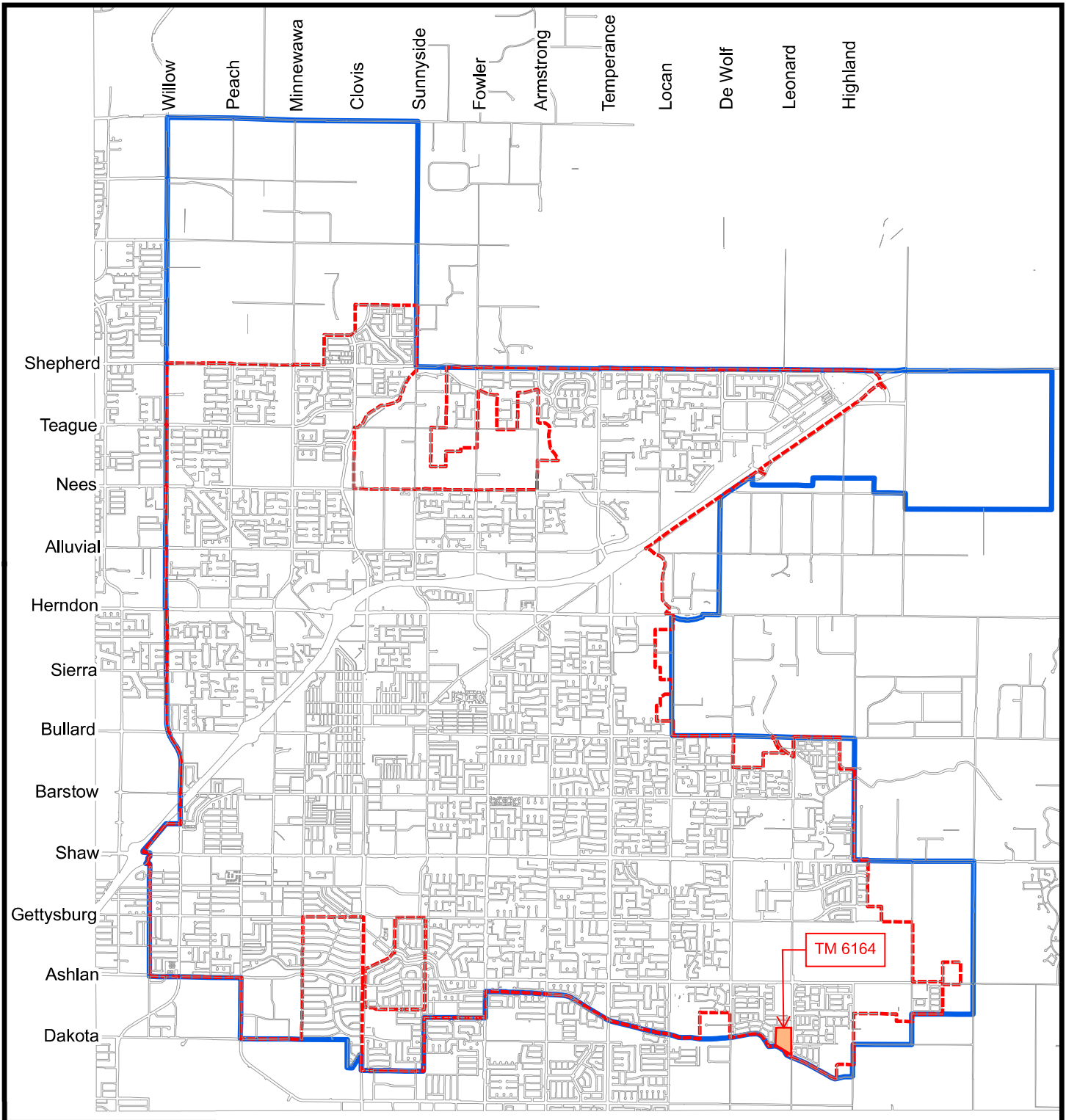
Record the Notice of Completion and release the Performance, Labor and Materials, and Maintenance Sureties as appropriate.

Prepared by: Jeff Brown, Engineer II

Reviewed by: City Manager AK

VICINITY MAP

TM 6164 (DYP 6164, LP a California Limited Partnership (DeYoung Properties))



Attachment 1





CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 5, 2023

SUBJECT: Public Utilities – Approval – Award a Contract to Karbonous, Inc. for Maintenance Work Consisting of Purchasing and Replacing Granular Activated Carbon (GAC) at Well 21 and Well 28 in the Amount of \$135,842.40.

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to authorize the City Manager to enter into an agreement with Karbonous, Inc. in the amount of \$135,842.40 to provide maintenance consisting of removing and replacing granular activated carbon (GAC) at City Well 21, located at 640 W. Alluvial Avenue, and Well 28, located at 399 W. Shaw Avenue.

EXECUTIVE SUMMARY

Included in the 2023-2024 Water Enterprise budget are funds to remove and install GAC at various well sites in the City. Three carbon suppliers were contacted through an informal bid process and three quotes were received for each well site. Karbonous, Inc. provided the lowest responsible quotes for both Well 21 and Well 28 in the amounts of \$67,921.20 (including tax) for each well. The work includes routine maintenance as defined in Section 2.9.02 (c) of the Clovis Municipal Code, consisting of removing the existing carbon vessel contents, transporting the contents to a reactivation/destruction facility, and then installing virgin coal-based carbon in two vessels at each well site.

BACKGROUND

Granular Activated Carbon (GAC) is currently utilized at 5 separate City well sites to absorb contaminants in the drinking water. Over time, the carbon loses its adsorptive capacity and no longer captures contaminants, at which point they begin to pass through into the drinking water

system. Once the carbon has reached its capacity, it must be removed and either replaced or regenerated. This will typically occur between one and three years, depending on the contaminant and production of the well.

Both wells have GAC treatment to remove contaminants from drinking water in order to stay below the maximum contaminant level (MCL) set by the State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW). Well 21 has GAC treatment to remove 1,2-Dibromo-3-Chloropropane (DBCP) from drinking water, while Well 28 has GAC treatment to remove 1,2,3-Trichloropropane (TCP) from drinking water. The carbon at Well 21 was most recently replaced on October 15, 2019. Carbon at Well 28 was most recently replaced on May 14, 2020 for Vessel B (lead vessel) and April 19, 2022 for Vessel A (lag vessel).

FISCAL IMPACT

Sufficient funds were included in the Water Enterprise budget for the 2023-2024 fiscal year. The City received a remediation settlement for DBCP in 1997 and for TCP in 2017. Funds from these settlements are budgeted each year to maintain compliance of the well sites requiring treatment.

REASON FOR RECOMMENDATION

Karbonous, Inc. provided the lowest responsible quote for both well sites and has extensive experience in this type of work. There are sufficient funds available in this fiscal year's budget for the cost of this project. Additionally, in order to continue to run the wells as permitted by DDW, replacement of the carbon is required to meet SWRCB drinking water standards.

ACTIONS FOLLOWING APPROVAL

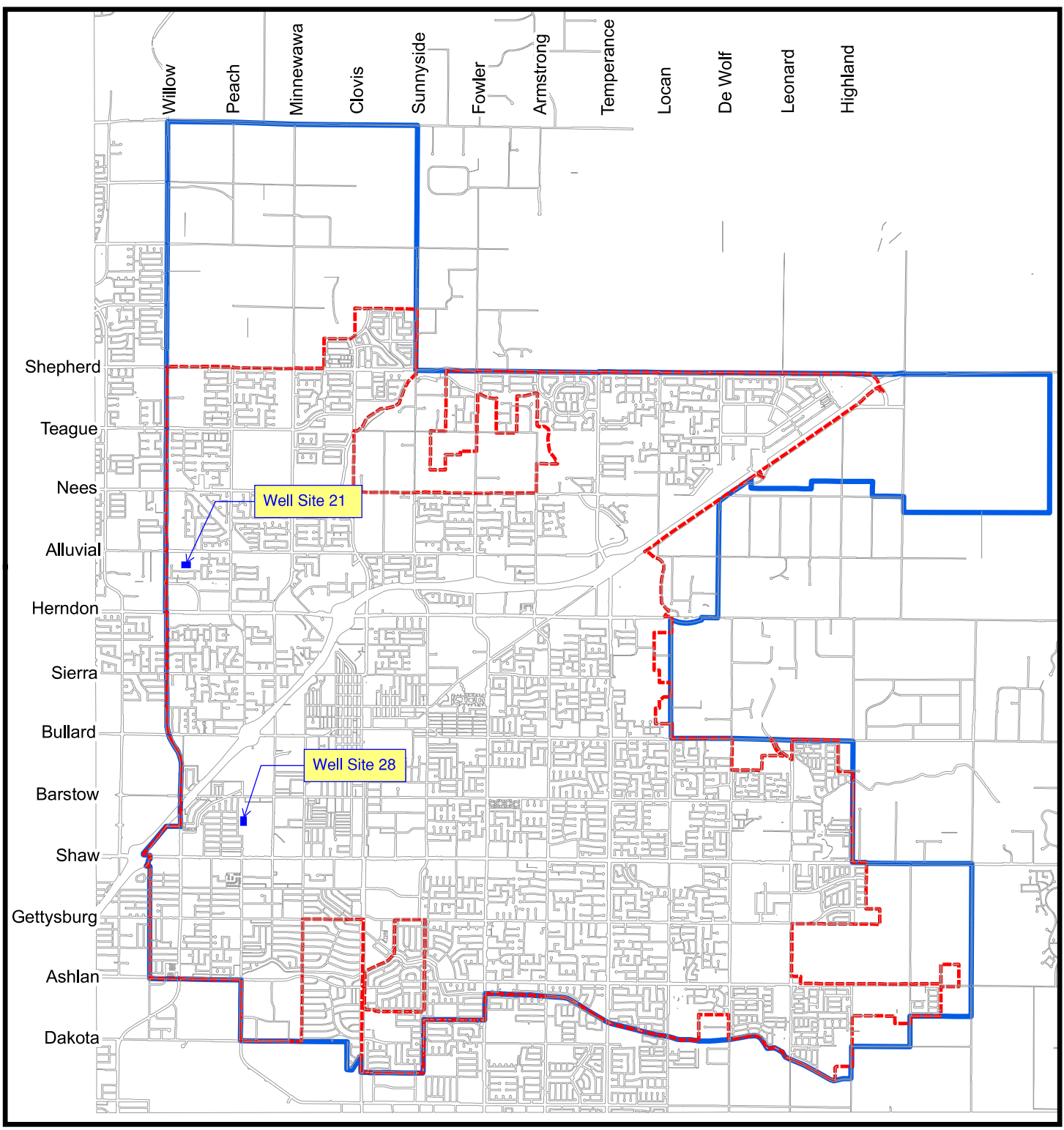
A contract will be prepared and executed by the City Manager, subject to the Contractor providing performance security that is satisfactory to the City.

Prepared by: Paul Armendariz, Assistant Public Utilities Director

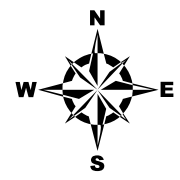
Reviewed by: City Manager AA

VICINITY MAP

AGENDA ITEM NO. 14.



ATTACHMENT 1



 CITY LIMITS  SPHERE OF INFLUENCE



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 5, 2023

SUBJECT: Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize the Purchase of a Police Department Aerial Bucket Truck from Altec Industries, Inc. Using the Sourcewell Purchasing Contract in the Amount of \$186,064.

ATTACHMENTS: None

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to approve waiving the City's formal bidding requirements and authorize purchasing a Police Department aerial bucket truck from Altec Industries, Inc. using the Sourcewell Purchasing Contract for a total cost of \$186,064, including tax and freight.

EXECUTIVE SUMMARY

There are funds in this fiscal year's Fleet Renewal budget to purchase a Model AT37G aerial bucket truck from Altec Industries, Inc. for the Police Department. The vehicle is needed for the safe mounting and servicing of surveillance, radio, and network equipment found on signal lights and City-owned property. The competitively bid contract price is \$186,064, and the new equipment will meet the CARB emission requirement for public agencies.

The Sourcewell Purchasing contract, formerly the National Joint Powers Alliance (NJPA) contract, is a nationwide public procurement service that makes the governmental procurement process more efficient. All contracts available to participating members have been awarded by virtue of a public competitive procurement process compliant with state statutes.

BACKGROUND

The recommended vehicle is available through the Sourcewell Purchasing Contract, formerly the NJPA contract, which is competitively bid on a nationwide basis. The vehicle is available to be ordered and will be built according to the Police Department's needs.

The Fleet Fund includes a vehicle and equipment replacement program where the different divisions within City departments budget for and contribute a set amount of money annually for the future scheduled replacement of a vehicle or piece of equipment. This allows each department and the divisions within the departments to financially plan for the large capital expense of purchasing new vehicles and equipment that need to be replaced due to age, wear and tear, or to meet regulatory requirements. Depending on the condition and need of the vehicle or equipment being replaced, it will be moved from front-line operation and may be kept as a back-up, or it will be auctioned off in the City's vehicle and equipment surplus program.

FISCAL IMPACT

Funds were included in the 2023-2024 Fleet Capital Acquisition budget, often referred to as the Fleet Renewal or Fleet Replacement budget. The Police Department has accumulated the necessary funds for the purchase of the new vehicle.

REASON FOR RECOMMENDATION

Sufficient funds have been collected to purchase the vehicle. The vehicle is needed for the safe mounting and servicing of surveillance, radio, and network equipment found on signal lights and City-owned property. Staff has evaluated the available equipment and has determined that the Model AT37G Aerial bucket truck from Altec Industries, Inc. will meet the Department's needs. The proposed method of purchasing the equipment is cost-effective and sufficient funds are available.

ACTIONS FOLLOWING APPROVAL

Purchase orders will be prepared for the City Manager's approval and sent to the vendors.

Prepared by: Jim Stringfield, Fleet Manager

Reviewed by: City Manager AK



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 5, 2023

SUBJECT: Public Utilities – Approval – Res. 23-____, Adopting an Integrated Pest Management Policy.

ATTACHMENTS: 1. Resolution and Integrated Pest Management Policy

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to approve Resolution 23-____, adopting the City of Clovis Integrated Pest Management Policy.

EXECUTIVE SUMMARY

The City of Clovis is a co-permittee of the Fresno-Clovis Stormwater Quality Management Program (Program), along with the Fresno Metropolitan Flood Control District (FMFCD), the City of Fresno, the County of Fresno, and California State University, Fresno (Permittees).

In 2017, the Central Valley Regional Water Quality Control Board (RWQCB) established a Basin Plan Amendment that set regulatory requirements for stormwater dischargers, including the Permittees listed above. One of these requirements was a Pyrethroid Control Program to monitor and regulate pyrethroid pesticides in stormwater. Pyrethroids are synthetic pesticides widely used for pest control in residential, urban, and agricultural areas throughout the Central Valley. Pyrethroids in exceedance of the maximum daily load triggered the need for a Pyrethroid Control Program. This program requires a Pyrethroid Management Plan and an adopted Integrated Pest Management (IPM) Policy to be submitted to the RWQCB for compliance by November 1, 2023.

An IPM Policy is included in the approach to manage pests on publicly owned property, it does not apply to private property, and it must meet the following requirements:

- a. Is consistent with IPM as defined by the University of California Statewide IPM Program (UC-IPM) or the California Structural Pest Control Board definition.
- b. Applies to all agency staff who conduct or contract for pest management and to pest management vendors under contract by the agency.
- c. Assigns responsibilities to a designated staff position and/or department to coordinate agency activities and ensure that the IPM Policy is implemented.

Day-to-day implementation of the IPM Policy will be coordinated by the IPM Coordinator, identified as the Principal Utilities Engineer in the Public Utilities Department. The IPM Coordinator will work with the City Departments that conduct or contract for pest management to ensure the policy is being implemented. Currently, the departments identified as using pyrethroids are Public Utilities and General Services.

BACKGROUND

The RWQCB and the State Water Resources Control Board (SWRCB) regulate water quality through water quality control plans called Basin Plans.

On June 8, 2017, the RWQCB adopted Resolution No. R5-2017-0057 to establish a Basin Plan Amendment and TMDL (Total Maximum Daily Load) for the Control of Pyrethroid Pesticide Discharges in the Sacramento and San Joaquin River Basins. Pyrethroids are synthetic pesticides widely used for pest control in residential, urban, and agricultural areas throughout the Central Valley. The Basin Plan Amendment established a Pyrethroid Control Program that included a conditional prohibition of discharge and monitoring requirements. The Pyrethroid Control Program required baseline monitoring for one year to determine whether municipal stormwater discharges exceeded the pyrethroid prohibition trigger. Of the three sampling events, the pyrethroid prohibition trigger was exceeded during the October 25, 2021, first-flush event. Therefore, due to an exceedance of the pyrethroid prohibition trigger, the Permittees are required to submit a Pyrethroid Management Plan within one year from the date of the exceedance. Accordingly, on October 25, 2022, the Permittees submitted to the Central Valley Water Board a Pyrethroid Management Plan with a draft Integrated Pest Management (IPM) Policy. Subsequently, on February 15, 2023, the Central Valley Water Board requested the Permittees to prepare a revised Pyrethroid Management Plan that includes an IPM Policy adopted by each member's governing body with an extended submission date of November 1, 2023.

The Pyrethroid Control Program allows pyrethroid discharges at concentrations above prohibition trigger levels if the discharger implements a Pyrethroid Management Plan to reduce pyrethroid levels in their discharge.

The pyrethroid management plan is a set of Best Management Practices (BMPs) that consists of:

- Education and Outreach Activities
- Pesticide Pollution Prevention Activities
- Progress Reports and Adaptive Management

The pesticide pollution prevention component of the Pyrethroid Management Plan requires the Permittees to adopt an agency specific IPM Policy.

Although each Permittee must adopt a separate IPM Policy, it is anticipated each Permittee will adopt the same or similar IPM Policy for knowledge sharing and to streamline each agency's implementation. The IPM Policy's goal is to reduce unnecessary pesticide use.

FISCAL IMPACT

The approval and adoption of the IPM Policy has no immediate fiscal impact. Costs associated with implementation of the IPM policy in future fiscal years are not known at this time, but are expected to be minimal.

REASON FOR RECOMMENDATION

Approval of the IPM Policy will allow the City to comply with the RWQCB permit requirements. By doing so, the City will avoid violations and penalties that may be associated with failure to submit the required Pyrethroid Management Plan and associated approved IPM Policy.

ACTIONS FOLLOWING APPROVAL

Staff will provide the adopted policy to FMFCD to include in the submittal of the Pyrethroid Management Plan to the RWQCB. Public Utilities staff will work with the associated City Departments on implementation of the IPM Policy.

Prepared by: Nicholas Torstensen, Principal Utilities Engineer

Reviewed by: City Manager AH

RESOLUTION 23-____**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS ADOPTING THE CITY OF CLOVIS INTEGRATED PEST MANAGEMENT POLICY**

WHEREAS, the City of Clovis is a co-permittee of the Fresno-Clovis Stormwater Quality Management Program (Program) along with the Fresno Metropolitan Flood Control District (FMFCD), the City of Fresno, the County of Fresno, and California State University, Fresno; and

WHEREAS, the Central Valley Regional Water Quality Control Board established a Basin Plan Amendment that set regulatory requirements for reducing Pyrethroids in stormwater discharges; and

WHEREAS, to comply with the requirements of the Basin Plan Amendment, the City – along with the other permittees – are required to implement a Pyrethroid Management Plan; and

WHEREAS, the Regional Water Quality Control Board is requiring the Pyrethroid Management Plan to include an approved and adopted Integrated Pest Management (IPM) Policy from each permittee.

NOW, THEREFORE, BE IT RESOLVED that the “City of Clovis Integrated Pest Management Policy” (Policy), a copy of which is attached hereto as Attachment A, is hereby approved.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 5, 2023, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: September 5, 2023

Mayor

City Clerk

CITY OF CLOVIS INTEGRATED PEST MANAGEMENT (IPM) POLICY

I. Background

The Fresno Metropolitan Flood Control District (District), the City of Fresno, City of Clovis (City), County of Fresno, and Caltrans are regulated by the federal Clean Water Act, the State Porter-Cologne Act, and a National Pollutant Discharge Elimination System (NPDES) permit for discharges of stormwater. As part of the California Central Valley Regional Water Quality Control Board's Basin Plan Amendment and Total Maximum Daily Load for the Control of Pesticide Discharges in the Sacramento and San Joaquin River Basins, the City – along with the other agencies mentioned above – are required to implement a Pyrethroid Management Plan to reduce pyrethroid discharges to the Maximum Extent Practical (MEP). The Pyrethroid Management Plan requires the adoption and implementation of an Integrated Pest Management (IPM) Policy.

For the purposes of this IPM policy, the City adopts the following University of California Statewide Integrated Pest Management¹ (UC-IPM) IPM definition:

IPM is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and nontarget organisms, and the environment.

II. Purpose

It is the purpose and intent of this IPM Policy to efficiently manage the use of pesticides² as a part of City operations and on City facilities, landscaped areas, and rights-of-way that may adversely impact water quality.

III. Scope

The IPM Policy governs City of Clovis (City) employees and contractors hired by the City and persons acting under the authority of the City in the care and maintenance of City facilities, landscaped areas, and rights-of-way. The term “pesticides” is a general term that includes herbicides, insecticides, fungicides, and rodenticides.

IV. Policy

It is the policy of the City that:

¹ <https://www2.ipm.ucanr.edu/what-is-IPM/>

² As defined in Section 12753 of Chapter 2 of Division 7 of the California Food and Agricultural Code.

1. Departments performing pest management will conform with the City's IPM Policy.
2. The City's IPM approach will include the following:
 - a) Educate and train City staff in the IPM program, practices, and policy.
 - b) Require City staff and pesticide application contractors to implement the IPM Policy on all City facilities, landscaped areas, and rights-of-way and to maintain records on and report the types and amounts of pesticides used, as well as IPM methods considered and used to prevent and control pests.
 - c) Identify, evaluate, and minimize or eliminate conditions that encourage pest problems.
 - d) Efficiently manage the use of pesticides.
 - e) Consider taking a "no action" approach in addressing certain pest control issues.
 - f) Review and consider available non-chemical options before using a chemical pesticide.
 - g) Identify pests and the least toxic methods to control pests.
 - h) Conduct careful and efficient inspection, monitoring, and assessment of pest problems by designated personnel or contractors knowledgeable of IPM methods.
 - i) Maintain records on IPM methods considered and used to prevent and control pests.
 - j) Comply with all applicable local, State of California (State), and federal regulations, including pesticide use and reporting.
 - k) Conduct decision-making based on the best available science and data.
3. Prepare a report annually on the implementation of the IPM Policy. The report should include IPM methods implemented, the quantity of pesticides used, and the cost of implementation.

V. Implementation

This IPM Policy shall be implemented individually by City departments. Departments that conduct or contract for pest management shall comply with this policy. Several areas important to the implementation of the IPM Policy are outlined below, including a description of the IPM Coordinator role.

a. Establish IPM Coordinator

The Principal Utilities Engineer is designated as the City's IPM Coordinator and is responsible for coordinating with the departments involved in pest management to ensure that the IPM Policy is implemented.

The primary responsibilities include the following:

1. Serve as the primary educator and trainer on IPM approaches and policy.
2. Provide guidance and oversight for Department IPM implementation.
3. Develop a common record keeping system.
4. Gather data and prepare reports to demonstrate compliance with the IPM policy.

VI. Definitions For Use With This Policy:

1. “Basin Plan Amendment” or “BPA” means the regulatory requirements for the Control of Pyrethroid Pesticide Discharges that was adopted by the Central Valley Water Board on June 8, 2017 with the adoption of Resolution R5-2017-0057. The BPA established measurable pyrethroid concentration goals and an implementation program for the control of pyrethroid pesticides that are or could potentially impact aquatic life in the Sacramento and San Joaquin River watersheds.
2. “Contractor” means a person, firm, corporation, or other entity, including a governmental entity, that enters into a contract with the City for pest management services.
3. “Integrated Pest Management” or “IPM” means an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and nontarget organisms, and the environment.³
4. “IPM Coordinator” means the designated agent or employee experienced in IPM field and office work and is responsible for IPM program coordination for the City.
5. “IPM Policy” means this Integrated Pest Management Policy.
6. “Pest” means any pest as defined in Section 12754.5 of Chapter 2 of Division 7 of the California Food and Agricultural Code. “Pest” includes any of the following that is, or is liable to become, dangerous or detrimental to the public health or the agricultural or nonagricultural environment of the State:
 - a) Any insect, predatory animal, rodent, nematode, or weed;
 - b) Any form of terrestrial, aquatic, or aerial plant or animal, virus, fungus, bacteria, or other microorganism (except viruses, fungi, bacteria, or other microorganisms on or in living man or other living animals);

³ <https://www2.ipm.ucanr.edu/what-is-IPM/>

- c) Anything that the Secretary of the California Department of Food and Agriculture or the Director of Pesticide Regulation for the California Department of Food and Agriculture by regulation declares to be a pest.
7. “Pest Control Adviser” or “PCA” means any person possessing a current pest control adviser license issued by the California Department of Pesticide Regulation. The PCA license is required for making pest control recommendations in the landscape setting.
 8. “Pest Control Operator” or “PCO” means any person possessing a current pest control operator license issued by the California Department of Pesticide Regulation. The PCO license is required when performing structural pest control.
 9. “Pest-Specific Plan” means a written plan addressing the management and control of a particular pest. Components of Pest-Specific Plans should include pest biology, impacts, pest thresholds, recommended treatments, monitoring frequency, cultural practices, and site modifications to prevent or reduce the incidence of pest problems.
 10. “Pesticide” means pesticide as defined in Section 12753 of Chapter 2 of Division 7 of the California Food and Agricultural Code. “Pesticide” includes any of the following:
 - a) Any substance or combination of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever;
 - b) Any spray adjuvant.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 5, 2023

SUBJECT: Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize the City Manager to Enter into a Contract with Golden Bell Products, Inc. for Insect Control in Sanitary Sewer Manholes in the Amount of \$188,421.25.

ATTACHMENTS: None

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to waive the City's formal bidding procedures and authorize the City Manager to execute a two-year contract services agreement totaling \$188,421.25 with Golden Bell Products, Inc. to apply insect control treatment to sanitary sewer manholes within the City of Clovis.

EXECUTIVE SUMMARY

Golden Bell Products, Inc. has the sole source right for distribution and application of Insecta, an EPA-approved and registered product, within the State of California. The application of Insecta is guaranteed for two (2) full years from the date of treatment. The City is currently on a two-year treatment rotation, with one half of the City receiving treatment one year and the remaining half receiving treatment the following year. This fall, approximately 3,700 sanitary sewer manholes in the area east of Sunnyside Avenue and south of Nees Avenue will be treated. In fall of 2024, the remaining approximately 4,000 manholes in the area west of Sunnyside Avenue and north of Nees Avenue will be treated. The work includes routine maintenance as defined in Section 2.9.02 (c) of the Clovis Municipal Code.

BACKGROUND

Cockroach populations in the City's wastewater collection system increased several years ago from habituating isolated areas to become a more widespread system problem. Insect activity is

detected during routine sewer line cleaning and in response to resident complaints. Wastewater staff actively treats isolated infested sections; however, the treatment provided by Golden Bell Products, Inc. is system-wide and has a longer lasting residual in comparison to any product historically used by City staff. This treatment has been used for several years within our sanitary sewer collection system and has been the most successful product to control sewer pest infestation.

FISCAL IMPACT

Sufficient funds were included in this year's 2023-24 Wastewater Enterprise budget. The cost to provide insect control in roughly half of the sanitary sewer manholes within the City this year is expected to be \$89,793.00. The following 2024-25 fiscal year budget will include sufficient funds – approximately \$99,000.00 – for treatment of the remaining half of the sewer manholes within the City.

REASON FOR RECOMMENDATION

Insecta is the product which Golden Bell Products, Inc. applies to sewer manholes for insect control. Insecta is the only registered product of its type and active ingredient labeled for use in sewer manholes. The product is a formulated product that is produced in an EPA-approved establishment. The product comes ready to use and since it is a polymerized product, there is no field mixing required, which is not the case with any additive-type product. Golden Bell Products, Inc. has used Insecta in approximately 85 other cities and sanitation agencies in California. Golden Bell Products, Inc. holds a Qualified Applicator License and is licensed by the California Agricultural Department of Pesticide Regulation. Public Utilities Wastewater staff has experience working with Golden Bell Products, Inc., and has experienced the superior performance of Insecta.

ACTIONS FOLLOWING APPROVAL

1. A contract services agreement will be prepared and executed by the City Manager, subject to receiving performance security that is satisfactory to the City.
2. Approximately half of the sewer manholes in the City will receive insect control treatment in October 2023 and the remaining half will receive treatment in October 2024.

Prepared by: Paul Armendariz, Assistant Public Utilities Director

Reviewed by: City Manager AA



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 5, 2023

SUBJECT: Consider various amendments to the City of Clovis Municipal Code related to Code Enforcement:

a. Consider Adoption - Ord. 23-06, Amending section 5.22.07 of the City of Clovis municipal code relating to the marijuana penalties and enforcement. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)

b. Consider Adoption - Ord. 23-07, Amending section 6.3.13, of chapter 6.3, of title 6, of the City of Clovis municipal code relating to the unlawful dumping of garbage. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)

c. Consider Adoption - Ord. 23-08, Adding section 5.27.512 to title 5 of the City of Clovis municipal code relating to the storing, maintaining, or placing of personal property in the public right-of-way. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)

d. Consider Adoption - Ord. 23-09, Amending section 5.10.06 of the City of Clovis municipal code relating to the application for a massage establishment permit or out-call massage business permit. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)

e. Consider Adoption - Ord. 23-10, Amending section 6.5.102, of chapter 6.5, of title 6, of the City of Clovis municipal code relating to the applications for water service. (Vote: 3-0-2 with Councilmember Basgall and Councilmember Bessinger absent)

Staff: Karey Cha, City Clerk

Recommendation: Adopt

ATTACHMENTS:

1. Ord. 23-06, Amending Section 5.22.07 (marijuana penalties)
2. Ord. 23-07, Amending Section 6.3.13 (illegal dumping)
3. Ord. 23-08, Adding Section 5.27.512 (public right-of-way)
4. Ord. 23-09, Amending Section 5.10.06 (massage businesses)
5. Ord. 23-10, Amending Section 6.5.102 (water service applications)

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to approve the introduction of the following ordinances to make the following amendments to the City of Clovis municipal code:

1. Ord. 23-06, Amending section 5.22.07 of the City of Clovis municipal code relating to the marijuana penalties and enforcement.
2. Ord. 23-07, Amending section 6.3.13, of chapter 6.3, of title 6, of the City of Clovis municipal code relating to the unlawful dumping of garbage.
3. Ord. 23-08, Adding section 5.27.512 to title 5 of the City of Clovis municipal code relating to the storing, maintaining, or placing of personal property in the public right-of-way.
4. Ord. 23-09, Amending section 5.10.06 of the City of Clovis municipal code relating to the application for a massage establishment permit or out-call massage business permit.
5. Ord. 23-10, Amending section 6.5.102, of chapter 6.5, of title 6, of the City of Clovis municipal code relating to the applications for water service.

EXECUTIVE SUMMARY

The City of Clovis Code Enforcement Team has identified 5 changes to the municipal code for consideration of City Council. The changes all would enhance the City's ability of maintaining Clovis at a high level, mitigate issues that have been experienced, and ensure the City is in compliance with State law.

The proposed changes in brief include:

1) Marijuana Cultivation:

Amend the code to increase the fines from the amounts of "\$100, \$500, and \$1,000 per subsequent occurrence" to "\$250 per cannabis plant in excess of the plants allowed on the property."

2) Illegal Dumping:

Amend the code to allow the owner of the vehicle dumping the material be held accountable. The amendment would also establish that a first-time violation may result in an administrative citation in an amount not to exceed \$1,000.

3) Storing of Personal Property in Public:

Would make it a violation to maintain personal property within any public right-of-way, and would be enforced by the Police Department removing such personal property from the public right-of-way following a 72-hour notice to the owner of said personal property.

4) Massage Licensing:

Adds an exemption in the Municipal Code for collecting fingerprints of certified massage therapists to be consistent with California Government Code section 51034(c)(8).

5) Utility Account Identification:

In order to combat fraud, it is proposed that the Municipal Code be amended to permit the City to require applicants for City Utilities to provide a government issued identification in order to receive utility services from the City of Clovis. Also, the amendment would make the owner of a property responsible for maintaining water or sewer connections from the date they take possession of the property.

BACKGROUND

The City of Clovis Code Enforcement Team has identified 5 changes to the municipal code for consideration of City Council. The changes all would enhance the City's ability to maintain Clovis at a high level, mitigate issues that have been experienced, and ensure the City follows State law.

The proposed changes include:

1) Marijuana Cultivation:

Amend the code to increase the fines from the amounts of "\$100, \$500, and \$1,000 per subsequent occurrence" to "\$250 per cannabis plant in excess of the plants allowed on the property."

Details:

Since 2018, Police Department personnel have conducted several search warrants related to the conversion of an entire residential dwelling into a commercial marijuana cultivation site. Typically, neighbors notice suspicious activity and alert Police Department narcotics detectives due to obvious odors. These investigations have often revealed unlawful tampering with utility service to bypass usage detection and unpermitted building adaptations that do not comply with current building code standards. Chemicals used during the cultivation process are stored inside the home and the watering system frequently causes unavoidable mold issues. High wattage lighting equipment is used to simulate sunlight and is often wired without proper connections. In addition to the many health, safety, and fire hazards found, illegal grows pose a genuine threat to the surrounding neighbors as criminals discover their location and are enticed to commit theft or related crimes.

CMC 5.22.03 and 5.22.04 outline City regulations related to the cultivation of marijuana. The regulatory intent is to prevent citizens from growing more than what would be deemed personal use and the code complies with California law. However, except for related serious crimes, violations of this ordinance are at the misdemeanor level. The current administrative process would require staff to follow the normative procedure of issuing a warning notice followed by administrative citations and fines in the amounts of \$100, \$500, and \$1,000 per subsequent occurrence.

Staff proposes that the City Council amend section 5.22.07 to include a \$250 civil penalty per cannabis plant more than the plants allowed per law. This will allow the City to recoup costs associated with the abatement of the nuisance and is in line with ordinances in similar cities. Additionally, administrative fees assessed will deter future "whole house grows" as cultivators would likely choose a city without such an ordinance and less risk of loss.

2) Illegal Dumping:

Amend the code to allow the owner of the vehicle dumping the material be held accountable.

Details:

In recent years, staff has seen an increase of illegal dumping in the City. Despite our best efforts to keep the City clean and free of blight, we have received several complaints related to dumping of items in city streets and public right of ways, as well as increased unauthorized dumping in community clean up piles or scheduled special pick-ups. This causes a heavy burden on the solid waste division staff.

Currently, CMC 6.3.13 there is no provision for citing the owner of the vehicle used for dumping if the subject cannot be identified by witnesses or surveillance camera footage.

Staff recommends the adding the ability to issue administrative citations to the registered owner of the vehicle used during the crime committed.

3) Storing of Personal Property in Public:

Would allow the Police Department to remove personal property from public right-of-way with a 72-hour noticing timeframe to the owner of the property.

Details:

In the past several years, a major complaint from citizens has been the accumulation of trash and personal property in public right of ways, along trails, in our parks, and along our canals. The clean-up of these locations requires several hours of City staff time and personal protective equipment due to hazardous human waste and often drug paraphernalia. The current Municipal Code sections relating to this issue deal specifically with maintaining garbage (CMC § 5.27.103, subd. (a)) or vegetation (CMC § 5.27.102) within the public right-of-way, but neither of these sections deal with maintaining personal property within the public right-of-way.

Another issue relating to personal property within the public right-of-way is the potential exposure to liability to the City that comes from disabled individuals not being able to adequately access public sidewalks and trails due to individuals maintaining debris and personal property within the public right-of-way. In *Barden v. City of Sacramento* (9th Cir. 2002) 292 F.3d 1073 ("*Barden*"), the court of appeals held that public sidewalks constitute a service or program for purposes of Title II of the Americans with Disabilities Act ("ADA"), and failure to maintain accessibility to public rights-of-way could expose the City to litigation.

The holding in *Barden* was recently cited to in *LA Alliance for Human Rights v. County of Los Angeles* (9th Cir. 2021) 25 F.4th 947, where the court of appeals held in pertinent part, that two of the disabled plaintiffs had standing to bring their ADA claims against the City of Los Angeles because their alleged injuries were traceable to the City due to the sidewalks constituting a service or program under Title II of the ADA. Currently, both the City and County of Sacramento are facing an ADA lawsuit from disabled plaintiffs due to both agencies failing to address homeless encampments setup within the public rights-of-way. (*Hood v. Sacramento* (E.D. Cal. 2023) 23-CV-00232.)

Staff requests the City Council review and approve an ordinance that holds persons accountable for storing personal property within a public right-of-way in a manner that obstructs or unreasonably interferes with the use of a public right-of-way. Staff has consulted with the City Attorney's office and reviewed similar ordinances in major cities for precedence. Enforcement of this ordinance would provide due process to the owners of the personal property and a 72-hour time frame prior to such personal property being considered abandoned and discarded, in accordance with California law.

4) Massage Licensing:

Adds an exemption in the Municipal Code for collecting fingerprints of certified massage therapists to be consistent with California Government Code section 51034, subdivision (c)(8).

Details:

Our current Clovis Municipal Code Section 5.10.06, subdivision (f) requires the submission of fingerprints for the applicant prior to a massage business permit being issued in the City. Staff has been made aware of a direct conflict with California Government Code section 51034, subdivision (c)(8) which states in part:

"Nothing contained in this chapter shall authorize a city, county, or city and county to do any of the following: (8) Impose a requirement that a person certified pursuant to Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code take any test, medical examination, or background check, including a criminal background check or requiring submission of fingerprints for a federal or state criminal background check, or comply with education requirements beyond what is required by Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code."

This section applies to all certificate holders, whether they are owners/operators or are just providing massage services. Therefore, it is necessary to add an exemption to the fingerprint requirement for certified massage therapists under CMC 5.10.06, subdivision (f).

5) Utility Account Identification:

In order to combat fraud, it is proposed that the Municipal Code be amended to permit the City to require applicants for City Utilities to provide a government issued identification in order to receive utility services from the City of Clovis.

Details:

In response to increased utility account delinquencies and instances of renter/occupant fraud, staff is requesting an ordinance amendment that would permit the City to require a utility account applicant to provide a valid government issued identification, and/or other means of preventing fraud in municipal utility services. In consultation with the City Attorney's Office, research shows that local agencies (i.e., municipalities) have the authority to ask for ID information and to make property owners guarantee that they will pay for utility service charges if their tenant(s) fail to pay the utility charges. This is most commonly done by the "customer/applicant" (i.e., owner and/or tenant) filling out an application prior to service(s) being turned on, where the customer/applicant must provide identifying information (e.g., driver's license, social security number, tax ID, etc.).

The amendment would also make property owners responsible for maintaining water or sewer connections from the time they take possession of a property (i.e., upon close of escrow the new owner has possession of the property; upon the end of a tenancy and the tenant vacating the property, the property owner has possession of the property.) The purpose of this amendment is to address any gaps in service from the time that a property changes hands between either a developer and a new property owner, or the property owner and a vacated tenant, for the time when service is being provided to the property, but no one is residing within the property.

FISCAL IMPACT

None.

REASON FOR RECOMMENDATION

The changes all would enhance the City's ability to maintain Clovis at a high level, mitigate issues that have been experienced, and ensure the City follows State law.

ACTIONS FOLLOWING APPROVAL

Staff will implement the code amendments and enforce the code.

Prepared by: Dave Roseno, Corporal
Andrew Haussler, Assistant City Manager

Reviewed by: City Manager AH



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council
FROM: Administration
DATE: September 5, 2023
SUBJECT: Receive and File – Annual Update on California Open Governance Laws
– Brown Act, Public Records Act, Ethics.

Staff: Scott Cross, City Attorney

Recommendation: Receive and File

ATTACHMENTS: 1. None.

City Attorney Scott Cross will give a verbal presentation on this item. Please direct questions to the City Manager's office at 559-324-2060.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 5, 2023

SUBJECT: Consider Approval – Letter to Fresno County Regarding Library Concerns from the Community.

Staff: John Holt, City Manager

Recommendation: Approve

ATTACHMENTS: 1. Proposed Letter

CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) since January 1, 2023 (Government Code 84308).

RECOMMENDATION

For the City Council to provide direction on the submission of a letter to the Fresno County Board of Supervisors informing the Board of community concerns received regarding the Fresno County Library.

EXECUTIVE SUMMARY

During Council comments at the City Council meeting on August 7, 2023, Council briefly discussed sending a letter to the Fresno County Board of Supervisors informing the Board of community concerns raised to Council members regarding the Fresno County Library. A draft letter is attached for Council consideration.

BACKGROUND

During Council comments at the City Council meeting on August 7, 2023, Council briefly discussed sending a letter to the Fresno County Board of Supervisors informing the Board of community concerns raised to Council members regarding the Fresno County Library. A majority of the City Councilmembers supported having the City Manager send a letter informing the Board of community concerns expressed about the display and availability of material featuring graphic sexual content in the children's section of the Clovis Branch of the Fresno County Library during the month of June. A draft letter is attached for Council consideration.

Although the direction was for staff (the City Manager) to send a letter, the matter must return to the City Council as an item on a City Council meeting agenda for approval before a letter is sent.

FISCAL IMPACT

None.

REASON FOR RECOMMENDATION

A majority of the City Council directed that a letter be sent to the Board of Supervisors. A letter has been prepared based on the direction and brief discussion at the August 7th City Council meeting, and the letter is attached for Council consideration.

ACTIONS FOLLOWING APPROVAL

If approved, the letter will be signed by the City Manager and sent to the Board of Supervisors.

Prepared by: Andrew Haussler, Assistant City Manager

Reviewed by: City Manager *JA*



CITY *of* CLOVIS

1033 FIFTH STREET • CLOVIS, CA 93612

_____, 2023

Sal Quintero, Chairman
Fresno County Board of Supervisors
2281 Tulare Street, #301
Fresno, CA 93721

RE: Communication with Citizens about Library Concerns

Dear Chairman Quintero and Members of the Board of Supervisors,

I have been directed by the Clovis City Council to send this letter informing you that Councilmembers Diane Pearce and Drew Bessinger, and Mayor Pro Tem Vong Mouanoutoua have received inquiries and concerns from numerous Clovis residents about the recent display and availability of material featuring graphic sexual content including images of sex acts in the children's section of the Clovis Branch of the Fresno County Library during the month of June.

Importantly, the City Council is not taking a position on any materials available in the Library. The City Council acknowledges that the selection of library materials is a matter for the County Librarian and the Board of Supervisors to determine. This letter is intended only to inform the Board of Supervisors of the concerns expressed by some Clovis residents to various members of the City Council.

The City of Clovis values the collaborative efforts between the Fresno County Library and the communities it serves, and we know the County will continue to provide a forum for community input and consider community input to create and maintain a positive and supportive library environment acceptable to everyone.

Sincerely,

John Holt
City Manager