



CITY *of* CLOVIS

AGENDA • CITY COUNCIL MEETING

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

December 5, 2022

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 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 desiring to make a verbal comment via chat will need to ensure that they accessed the meeting with audio transmission capabilities.

CALL TO ORDER

FLAG SALUTE - Councilmember Ashbeck

ROLL CALL

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.

1. Administration - Approval - Minutes from the November 14, 2022, Council Meeting.
2. Finance – Receive and File – Investment Report for the Month of July 2022.
3. Finance – Receive and File – Treasurer’s Report for the Month of July 2022.
4. General Services - Approval - Waive Formal Bidding or Proposal Requirements and Authorize Lease of Copiers through Cooperative Purchase Contract between OMNIA Partners and Kyocera.
5. General Services – Approval – Waive the City’s Usual Purchasing Requirements and Authorize the Purchase of Eight (8) Ram Promaster Minibuses and Three (3) Class E 32’ Freightliner Buses for \$2,074,048.63 Utilizing the CalACT Competitive Bid Award; and Approval – Res. 22-____, Amending the 2022-2023 Transit Budget by \$349,048.63 in Previously Received State Transit Assistance Funds.
6. General Services – Approval – Waive the City’s Formal Purchasing Requirements and Authorize the Purchase of Remix by Via Route Planning Software for \$88,000 for Five Years of Service; and Approval – Res. 22-____, Amending the 2022-2023 Transit Budget by \$18,500 in Previously Received State Transit Assistance funds for the First Year of Service.
7. Planning and Development Services – Approval – Final Acceptance for CIP 22-01 Rubberized Cape Seal 2022.
8. Planning and Development Services - Approval – Res. 22-____, Annexation of Miscellaneous Properties to the Landscape Maintenance District No. 1.
9. Public Utilities – Approval – Authorize the Purchase of Supervisory Control and Data Acquisition Human Machine Interface (SCADA HMI) Software from Inductive Automation, LLC for \$52,081.60; and Approval – Waive Formal Proposal Procedures and Authorize the City Manager to Enter into an Agreement with TESCO Controls, Inc. to Integrate the new SCADA HMI Software for \$279,315.
10. Public Utilities – Approval – Waive Formal Request for Proposal Procedures and Authorize the City Manager to Enter into an Agreement with Clean Energy Renewable Fuels, LLC, for Supply of Renewable Natural Gas for City Fleet Fueling and for Management of Natural Gas Fuel Revenue Credits.
11. Public Utilities – Approval – Authorize the Execution of a Real Property Purchase and Sale Agreement for the Property Located at 8761 E. Barstow Avenue, Clovis, CA from Darlene A. Millhollin and Janet Stockton, Co-Trustees of the Darlene A. Millhollin Trust, in the Amount of \$3,403,000; and Approval – Authorize Staff to Develop an Agreement Memorializing a \$1,701,500 Inter-Fund Loan from the Water Enterprise Fund to the Parks and Acquisition Developer Fund; and Approval – Res. 22-____, Amending the 2022-2023 Water Enterprise and Water Developer Budgets to Allocate Funds in the Amount of \$3,403,000 for Purchase of the Property.
12. Public Utilities – Approval – Authorize the Execution of a Real Property Purchase and Sale Agreement to Acquire Property Located at 1589/1599 Menlo Avenue, Clovis, CA from Janet Stockton in the Amount of \$796,000; and Approval – Authorize the Execution of a Land Lease Agreement with Janet Stockton for Property Located at 1589/1599 Menlo Avenue, Clovis, CA; and Approval – Res. 22-____, Amending the 2022-2023 Water, Sewer, and Refuse Enterprise Budgets to Allocate \$796,000 for Purchase of the Property.

PRESENTATIONS/PROCLAMATIONS

13. Presentation of Proclamation Recognizing Betsy Sandoval for her Years of Service to the Clovis Unified School District Board.

COUNCIL ITEMS

14. Consider Approval – First Amendment to City Manager Employment Agreement.

Staff: Shonna Halterman, General Services Director

Recommendation: Approve

PRESENTATIONS/PROCLAMATIONS

15. Presentation of Proclamations to Mayor Flores and Councilmember Whalen by Mayor Pro Tem, Lynne Ashbeck.
16. Presentation of Plaques to Mayor Flores and Councilmember Whalen by Mayor Pro Tem Lynne Ashbeck.
17. Presentation of Bronco Billy Bronze Statues to Mayor Flores and Councilmember Whalen by Mayor Pro Tem Lynne Ashbeck.
18. Presentation of City of Clovis Street Signs to Mayor Flores and Councilmember Whalen by Public Utilities Director, Scott Redelfs.

COUNCIL ITEMS

19. Council Comments.

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.

ADJOURNMENT

CHRISTMAS TREE LIGHTING CEREMONY – 7:00 P.M.

MEETINGS AND KEY ISSUES

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

Dec. 12, 2022 (Mon.) City Council Reorganization
Dec. 19, 2022 (Mon.)
Jan. 3, 2023 (Tue.) To be Cancelled
Jan. 9, 2023 (Mon.)
Jan. 17, 2023 (Tue.)

CLOVIS CITY COUNCIL MEETING

November 14, 2022

6:00 P.M.

Council Chamber

Meeting called to order by Councilmember Ashbeck at 6:02
Flag Salute led by Councilmember Whalen

Roll Call: Present: Councilmembers Ashbeck, Bessinger, Mouanoutoua, Whalen,
Mayor Flores

PUBLIC COMMENTS – 6:05

Norman Morrison, Dry Creek Preserve resident, shared concerns regarding traffic issues on Clovis streets adjacent to the Dry Creek Preserve.

Charles Brough, resident, shared complaints regarding street signage and crosswalk markings at Gettysburg and Armstrong Avenues where Gettysburg Elementary School is located.

Paul Pierce, resident, commented on traffic issues near Fowler and Nees Avenues.

Rich Meisner, St. Martha's Pantry representative, shared concerns with the Pantry moving out of Clovis and no longer serving Clovis residents.

CONSENT CALENDAR – 6:28

Councilmember Whalen abstained from voting on Item 10 as he owns property within 1,000 feet of the project site.

Motion by Councilmember Ashbeck, seconded by Councilmember Bessinger, that the items on the Consent Calendar, with the exception of Item 10, be approved. Motion carried by unanimous vote.

1. Administration - Approval - Minutes from the November 7, 2022, Council Meeting.
2. Finance - Approved - **Res. 22-130**, Budget Amendment to Increase Expenditures Related to Approved Negotiated Salary and Benefit Adjustments.
3. General Services – Approved – Waive Formal Bidding or Proposal Requirements and Authorize Purchase of Office Supplies through Cooperative Purchase Contract between OMNIA Partners and Office Depot.
4. Planning and Development Services - Approved – **Res. 22-131**, Final Map Tract 6292, located at the northeast area of Clovis Avenue and Shepherd Avenue (Lennar Homes of California, LLC).
5. Planning and Development Services - Approved – **Res. 22-132**, Annexation of Proposed Tract 6292, located at the northeast area of Clovis Avenue and Shepherd Avenue to the Landscape Maintenance District No. 1 of the City of Clovis (Lennar Homes of California, LLC).

6. Planning and Development Services - Approved – **Res. 22-133**, Final Map Tract 6342, located at the northeast area of Clovis Avenue and Shepherd Avenue (Lennar Homes of California, LLC).
7. Planning and Development Services – Approved – **Res. 22-134**, Annexation of Proposed Tract 6342, located at the northeast area of Clovis Avenue and Shepherd Avenue to the Landscape Maintenance District No. 1 of the City of Clovis (Lennar Homes of California, LLC).
8. Planning and Development Services - Approved – **Res. 22-135**, Final Map Tract 6344, located at the northeast area of Clovis Avenue and Shepherd Avenue (Lennar Homes of California, LLC).
9. Planning and Development Services - Approved – **Res. 22-136**, Annexation of Proposed Tract 6344, located at the northeast area of Clovis Avenue and Shepherd Avenue to the Landscape Maintenance District No. 1 of the City of Clovis (Lennar Homes of California, LLC).
11. Planning and Development Services - Approved – Bid Award for CIP 19-15, Gettysburg/Norwich Alley Reconstruction – Villa Avenue to Gettysburg Avenue, and Authorize the City Manager to Execute the Contract on Behalf of the City.
12. Public Utilities – Approved – Contract Award for the Purchase of a Low-NOx Flare at the Clovis Landfill, and Authorize the City Manager to Execute the Contract on Behalf of the City.
13. Public Utilities – Approved – Waive Formal Bidding Requirements and Authorize the Purchase of a Global Street Sweeper from Terry Equipment Inc. Using the Sourcewell Purchasing Contract.

6:29 – ITEM 10 - Planning and Development Services – Approved – Final Acceptance for Final Map for Tract 6348, located at the northeast corner of West Nees and North Timmy Avenues (Gleneagles Homes, Gary McDonald Homes). (Councilmember Whalen has a conflict of interest on this item)

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Bessinger.
Motion carried 4-0-0-1, with Councilmember Whalen abstaining.

COUNCIL ITEMS – 6:30

6:30 – ITEM 14 - APPROVED - CONFIRMATION OF CITY MANAGER'S APPOINTMENT OF ECONOMIC DEVELOPMENT, HOUSING AND COMMUNICATIONS DIRECTOR.

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Whalen.
Motion carried by unanimous vote.

6:38 – ITEM 15 – APPROVED – CHANGE OF COUNCIL MEETING SCHEDULE.

Motion for approval by Councilmember Bessinger, seconded by Councilmember Ashbeck.
Motion carried by unanimous vote.

ADMINISTRATIVE ITEMS – 6:39

6:39 – ITEM 16 - CONSIDER VARIOUS ITEMS ASSOCIATED WITH ±923 ACRES OF PROPERTY LOCATED NORTH OF SHEPHERD AVENUE GENERALLY BETWEEN SUNNYSIDE AVENUE AND NORTH CARSON AVENUE (BIG DRY CREEK DAM):

Jeff Harris, Wilson Homes representative, commented on the process of the bringing this property into the sphere of influence and addressed questions by the Council.

Tro, representative of various property owners, shared concerns regarding annexation and not wanting to connect to City water services.

Norman Morrison, Dry Creek Preserve resident, commented on the lack of noticing and concerns regarding development in the area.

Lloyd Buckner, Dry Creek Preserve resident, commented on the impacts of development to transportation.

Nathaniel Wiebert, County resident, shared concerns regarding traffic and water as the City continues to grow.

Arakel Arisian, Heritage Development Company representative, commented on the development of the Heritage Grove area.

Paul Pierce, resident, commented on the traffic impacts of new development.

Jim S., County resident, commented on the lack of noticing.

Craig Howard, County resident, requested for the City Council to postpone action on this item because of the lack of noticing.

16A - APPROVED – **RES. 22-137**, A REQUEST AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT AGREEMENT BETWEEN THE CITY OF CLOVIS AND DE NOVO PLANNING GROUP FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT AND RELATED SERVICES.

Motion for approval by Councilmember Whalen, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.

16B - APPROVED – **RES. 22-138**, A REQUEST ALLOWING FOR THE PREPARATION AND SUBMITTAL OF AN APPLICATION TO THE FRESNO COUNTY LOCAL AGENCY FORMATION COMMISSION TO AMEND THE CITY OF CLOVIS SPHERE OF INFLUENCE TO INCLUDE ±923 ACRES.

Motion for approval by Councilmember Whalen, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.

8:39 – ITEM 17 - CONSIDER VARIOUS ITEMS ASSOCIATED WITH CLOVIS LANDMARK SQUARE, LOCATED ON THE NORTH SIDE OF THIRD STREET AT VETERANS MEMORIAL PARKWAY.

Mayor Flores abstained from hearing and voting on this item because he owns property within 1,000 feet of the project site.

17A. RECEIVED AND FILED – UPDATE ON LANDMARK SQUARE CONSTRUCTION.

17B. APPROVED – **RES. 22-139**, AMENDING THE 2022-2023 COMMUNITY INVESTMENT PROGRAM (CIP) BUDGET FOR THE LANDMARK SQUARE PROJECT.

Motion for approval by Councilmember Whalen, seconded by Councilmember Mouanoutoua. Motion carried 4-0-0-1 with Mayor Flores abstaining.

9:06 – ITEM 18 - ADOPTED – **ORD. 22-10**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS AMENDING SECTIONS 8.1.02, 8.2.101, 8.5.101, 8.6.101, 8.15.101, 8.16.101, 8.17.101 OF TITLE 8 OF THE CLOVIS MUNICIPAL CODE PERTAINING TO ADOPTION OF 2022 CALIFORNIA BUILDING, ELECTRICAL, MECHANICAL, PLUMBING, RESIDENTIAL, ENERGY AND GREEN BUILDING STANDARDS CODES. (VOTE: 4-0-1 WITH COUNCILMEMBER WHALEN ABSENT)

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Bessinger. Motion carried by unanimous vote.

9:08 – ITEM 19 - ADOPTED – **ORD. 22-11**, AMENDING VARIOUS SECTIONS OF TITLE 4, CHAPTER 4.4, ARTICLE 1 OF THE CLOVIS MUNICIPAL CODE RELATING TO THE CALIFORNIA FIRE CODE. (VOTE: 4-0-1 WITH COUNCILMEMBER WHALEN ABSENT)

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Bessinger. Motion carried by unanimous vote.

CITY MANAGER COMMENTS – 9:09

COUNCIL COMMENTS – 9:09

CLOSED SESSION – 9:16

ITEM 20 - GOVERNMENT CODE SECTION 54957 PUBLIC EMPLOYMENT PERFORMANCE EVALUATION TITLE: CITY MANAGER

ITEM 21 - GOVERNMENT CODE SECTION 54957.6 CONFERENCE WITH LABOR NEGOTIATORS AGENCY DESIGNATED REPRESENTATIVES: CITY ATTORNEY, SCOTT G. CROSS UNREPRESENTED EMPLOYEE: CITY MANAGER

Mayor Flores adjourned the meeting of the Council to December 5, 2022

Meeting adjourned: 10:20 p.m.

Mayor

City Clerk



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Finance Department

DATE: December 5, 2022

SUBJECT: Finance – Receive and File – Investment Report for the Month of July 2022.

ATTACHMENTS:

1. Distribution of Investments
2. Monthly Investment Transactions
3. Certificates of Deposit
4. Municipal Securities
5. Graph of July 31, 2022 Treasury Rates

Attached is the Investment Report for the month of July 2022. Shown in Attachment 1 is the distribution of investments which lists all the individual securities owned by the City with the book and market values. Book value is the actual price paid for the investment. Market value is the amount that the investment is worth if sold in the open market. The market value (which fluctuates daily) that is used in the report is as of the last working day of the month. Attachment 2 reflects the monthly investment transactions for the month of July 2022. Attachment 3 lists the certificates of deposit. Attachment 4 lists the municipal securities. Attachment 5 is a graph of Treasury rates on July 31, 2022.

The investment of the City's funds is performed in accordance with the adopted Investment Policy. Funds are invested with the following objectives in mind:

1. Assets are invested in adherence with the safeguards and diversity of a prudent investor.
2. The portfolio is invested in a manner consistent with the primary emphasis on preservation of the principal, while attaining a high rate of return consistent with this guideline. Trading of securities for the sole purpose of realizing trading profits is prohibited.
3. Sufficient liquidity is maintained to provide a source for anticipated financial obligations as they become due.

4. Investments may be made, consistent with the Investment Policy Guidelines, in fixed income securities maturing in three years or less and can be extended to five years with the City Manager's approval.

The Finance Department invests the City's assets with an expectation of achieving a total rate of return at a level that exceeds the annualized rate of return on short-term government guaranteed or insured obligations (90-day Treasury bills) and to assure that the principal is preserved with minimal risk of depreciation or loss. In periods of rising interest rates, the City of Clovis portfolio return may be less than that of the annualized 90-day Treasury bill. In periods of decreasing interest rates, the City of Clovis portfolio return may be greater than the annualized 90-day Treasury bill. The current 90-day Treasury bill rate (annualized) is 0.43%. The rate of return for the City of Clovis portfolio is 1.27%. The goal for the City of Clovis investment return is 120% of the 90-day Treasury bill rate. The current rate of return is 294% of the Treasury bill rate.

In accordance with the Investment Policy, the investment period on each investment does not exceed three years and can be extended to five years with the City Manager's approval. As of July 2022, the average investment life of the City's investment portfolio is 1.22 years.

Current Investment Environment and Philosophy

During the month of July 2022, the federal funds rate was increased to 2.25%-2.50%. On July 31, 2022, the Treasury yield curve increased from 3-month to 6-month notes, then decreased slightly to 10-year notes.

Certificates of Deposit (CD's)

The City purchases both negotiable and non-negotiable Certificates of Deposit (CD's). Although negotiable CD's can be traded, it is the City's policy to buy and hold all CD's. Negotiable CD's are held by U.S. Bank, a third party custodian. Non-negotiable CD's are held in the City's safe.

Purchases and Maturities

- 0 government securities were purchased.
- 0 government securities were called or matured.
- 4 certificates of deposit totaling \$1,000,000 were purchased.
- 1 certificate of deposit totaling \$250,000 matured.
- 1 municipal security totaling \$3,505,000 was purchased.

Market Environment

- During July the federal funds rate was increased to 2.25%-2.50%.
- On July 31, the yield curve increased from 3-month to 6-month notes, then decreased slightly to 10-year notes. See Attachment 5, Graph of Treasury Rates on July 31, 2022.

Prepared by: Jeffrey Blanks, Deputy Finance Director

Reviewed by: City Manager *AK*

**City of Clovis
Distribution of Investments
As of July 31, 2022**

AGENDA ITEM NO. 2.

	COST	NET BOOK VALUE	MARKET VALUE *	YIELD TO MATURITY	STATED INTEREST RATE	INVEST DATE	MATURITY DATE	DAYS TO MATURITY FROM 7/31/2022
GOV'T SECURITIES								
FFCB	3,005,250	3,001,715	2,998,410	1.625%	1.625%	11/27/19	08/22/22	22
FHLB	6,065,100	6,021,482	5,997,300	2.000%	2.000%	10/31/19	09/09/22	40
FFCB	2,984,460	2,994,423	2,994,180	1.375%	1.375%	11/27/19	10/11/22	72
FFCB	5,008,500	5,003,235	4,989,250	1.600%	1.600%	01/23/20	10/13/22	74
FHLB	8,045,600	8,018,286	6,477,250	1.875%	1.875%	12/19/19	12/09/22	131
FHLB	5,047,500	5,019,684	6,477,250	1.875%	1.875%	01/23/20	12/09/22	131
FAMCMTN	8,544,965	8,521,148	8,426,645	1.350%	1.350%	02/27/20	02/27/23	211
FHLB	5,255,000	5,128,598	4,984,287	2.125%	2.125%	03/26/20	03/10/23	222
FHLB	13,579,800	13,282,915	12,909,153	2.125%	2.125%	04/30/20	03/10/23	222
FFCB	5,000,000	5,000,000	4,783,750	0.250%	0.250%	03/01/21	03/01/24	579
FFCB	1,999,000	1,999,174	1,920,860	0.300%	0.300%	03/24/21	03/18/24	596
FHLB	5,000,000	5,000,000	4,785,200	0.350%	0.350%	06/07/21	06/07/24	677
FHLB	4,969,000	4,972,423	4,767,750	1.050%	1.050%	01/20/22	11/15/24	838
FHLB	3,980,000	3,982,075	3,856,800	1.750%	1.750%	02/28/22	02/28/25	943
FHLB	4,000,000	4,000,000	3,877,360	2.750%	2.750%	04/25/22	04/25/25	999
FAMCMTN	3,947,600	3,953,028	3,764,480	0.750%	0.750%	12/16/21	07/28/25	1,093
FAMCMTN	4,948,500	4,953,442	4,667,200	0.600%	0.600%	10/14/21	09/08/25	1,135
FHLB	4,963,000	4,966,655	4,590,000	0.580%	0.580%	09/08/21	02/11/26	1,291
FHLB	3,922,000	3,928,967	3,692,440	0.750%	0.750%	12/16/21	02/24/26	1,304
FFCB	4,967,500	4,969,955	4,592,300	0.940%	0.940%	10/14/21	09/28/26	1,520
FHLB	3,649,200	3,649,200	3,709,440	1.150%	1.150%	06/29/22	10/28/26	1,550
FHLB	5,988,000	5,988,899	5,650,680	1.250%	1.250%	11/24/21	11/24/26	1,577
FHLB	5,127,757	5,119,620	4,856,750	2.125%	2.125%	01/20/22	12/11/26	1,594
FHLB	4,043,250	4,043,250	4,122,450	1.020%	1.020%	06/29/22	02/24/27	1,669
FHLB	3,695,200	3,714,537	3,648,720	0.900%	0.900%	03/31/22	02/26/27	1,671
FHLB	4,000,000	4,000,000	3,973,040	2.375%	2.375%	03/08/22	03/08/27	1,681
SECURITIES TOTAL	<u>\$ 131,736,182</u>	<u>\$ 131,232,711</u>	<u>\$127,512,945</u>					
LAIF		<u>\$ 74,651,233</u>	<u>\$ 74,651,233</u>					
Municipal Issuance		<u>\$ 28,505,000</u>	<u>\$ 26,994,880</u>					
Sweep Account (Union Bank)		<u>\$ 51,872,996</u>	<u>\$ 51,872,996</u>					
TOTAL CD'S		<u>\$ 13,245,000</u>	<u>\$ 12,948,633</u>					
TOTAL INVESTMENTS		<u>\$ 299,506,940</u>	<u>\$ 293,980,687</u>					

* Market values for securities obtained from US Bank.

City of Clovis
Monthly Investment Transactions
As of July 31, 2022

AGENDA ITEM NO. 2.

Institution	Description	Activity	Amount	Market Value	Rate	Activity Date	Maturity Date
CHABOT LAS POSITAS	Mun Iss.	Purchase	3,505,000	3,505,000	1.080%	07/27/22	08/01/26
AMERICAN FIRST	CD	Purchase	250,000	250,000	3.250%	07/15/22	07/15/25
AMERICAN NATL	CD	Purchase	250,000	250,000	3.100%	07/27/22	07/28/25
TCM BANK	CD	Purchase	250,000	250,000	3.350%	07/28/22	07/28/25
TRUSTONE FINL CR UN	CD	Purchase	250,000	250,000	3.250%	07/19/22	07/21/25
MORGAN STANLEY	CD	Maturity	250,000	250,000	2.100%	07/25/22	07/25/22

PORTFOLIO DATA

Current Month (07/22)

	Book	Market
CD'S	\$ 13,245,000	\$ 12,948,633
Gov't Securities*	131,232,711	127,512,945
Municipal Securities	28,505,000	26,994,880
LAIF	74,651,233	74,651,233
Sweep Account (Union Bank)	51,872,996	51,872,996
TOTAL	\$ 299,506,940	\$ 293,980,687

Prior Month (06/22)

	Book	Market
CD'S	\$ 12,495,000	\$ 12,207,735
Gov't Securities*	131,232,711	127,006,620
Municipal Securities	25,000,000	23,571,510
LAIF	74,511,731	74,511,731
Sweep Account (Union Bank)	71,690,282	71,690,282
TOTAL	\$ 314,929,724	\$ 308,987,878

Three Months Previous (04/22)

	Book	Market
CD'S	\$ 11,745,000	\$ 11,541,842
Gov't Securities*	135,597,608	131,674,865
Municipal Securities	18,185,000	17,212,328
LAIF	74,511,731	74,511,731
Sweep Account (Union Bank)	46,053,688	46,053,688
TOTAL	\$ 286,093,027	\$ 280,994,454

Six Months Previous (01/22)

	Book	Market
CD'S	\$ 10,485,000	\$ 10,501,351
Gov't Securities*	137,948,058	137,093,595
Municipal Securities	9,465,000	9,313,433
LAIF	74,453,060	74,453,060
Sweep Account (Union Bank)	42,660,508	42,660,508
TOTAL	\$ 275,011,626	\$ 274,021,947

One Year Previous (07/21)

	Book	Market
CD'S	\$ 10,235,000	\$ 10,372,581
Gov't Securities*	118,200,318	119,368,101
Municipal Securities	5,900,000	5,904,708
LAIF	74,364,940	74,364,940
Sweep Account (Union Bank)	45,219,191	45,219,191
TOTAL	\$ 253,919,449	\$ 255,229,521

*Adjusted Quarterly for Premium/Discount Amortization

**City of Clovis
Certificates of Deposit
As of July 31, 2022**

AGENDA ITEM NO. 2.

Negotiable CDs	COST	MARKET PRICE	INTEREST RATE	INVEST DATE	MATURITY DATE	MATURITY FROM 07/31/22	INTEREST FREQUENCY
Capital One Ntnl Assn	250,000	249,992.50	2.150%	08/07/19	08/08/22	8	QUARTERLY
Everbanke USA Salt Lake City	250,000	249,985.00	2.050%	08/07/19	08/08/22	8	QUARTERLY
Raymond James Bank	250,000	249,935.00	1.900%	08/23/19	08/23/22	23	QUARTERLY
Ally Bank	250,000	249,837.50	1.850%	09/19/19	09/19/22	50	QUARTERLY
Usalliance Federal Credit Union	250,000	249,850.00	2.850%	09/30/19	09/30/22	61	QUARTERLY
Morgan Stanley Bank	250,000	249,725.00	2.100%	10/17/19	10/17/22	78	MONTHLY
Lafayette Fed Cr Un	250,000	249,430.00	1.700%	11/22/19	11/22/22	114	MONTHLY
Live Oak Banking Co.	250,000	249,327.50	1.750%	12/11/19	12/12/22	134	QUARTERLY
Wells Fargo Natl Bk West	250,000	249,365.00	1.800%	12/13/19	12/13/22	135	QUARTERLY
Valley Cent Svgs Bk	250,000	248,977.50	1.700%	01/15/20	01/17/23	170	QUARTERLY
Sallie Mae Bank	250,000	249,152.50	1.900%	01/23/20	01/23/23	176	QUARTERLY
Servisfirst Bank	250,000	248,527.50	1.600%	02/21/20	02/21/23	205	MONTHLY
Celtic Bank	250,000	248,230.00	1.550%	03/13/20	03/13/23	225	MONTHLY
Axos Bank	250,000	248,075.00	1.550%	03/26/20	03/27/23	239	MONTHLY
Nicolet Natl Bank	250,000	247,252.50	0.900%	03/27/20	03/27/23	239	MONTHLY
Centerstate Bank	250,000	246,962.50	0.900%	03/30/20	03/30/23	242	MONTHLY
Bank Leumi	250,000	247,872.50	1.450%	03/31/20	03/31/23	243	MONTHLY
Discover Bank	250,000	247,835.00	1.350%	04/02/20	04/03/23	246	MONTHLY
Berkshire Bank	250,000	247,525.00	1.300%	04/08/20	04/06/23	249	MONTHLY
American Express	250,000	246,985.00	1.100%	04/21/20	04/21/23	264	MONTHLY
New York Cmnty Bank	250,000	240,580.00	0.350%	12/11/20	12/11/23	498	QUARTERLY
Transportation Alliance Bk	250,000	238,192.50	0.250%	03/12/21	03/12/24	590	QUARTERLY
Preferred Bank	250,000	237,897.50	0.250%	03/25/21	03/25/24	603	QUARTERLY
Bankunited Natl Assn	245,000	233,818.20	0.450%	03/31/21	04/01/24	610	QUARTERLY
Greenstate Credit Union	250,000	236,910.00	0.450%	06/16/21	06/17/24	687	QUARTERLY
Eaglemark Savings Bank	250,000	236,430.00	0.400%	06/30/21	06/28/24	698	QUARTERLY
Texas Exchange Bk	250,000	236,660.00	0.500%	07/09/21	07/09/24	709	QUARTERLY
BMW Bk North Amer	250,000	236,547.50	0.550%	07/30/21	07/30/24	730	QUARTERLY
Toyota Finl Svgs	250,000	236,260.00	0.650%	09/09/21	09/09/24	771	QUARTERLY
State Bk India	250,000	236,110.00	0.650%	09/17/21	09/17/24	779	QUARTERLY
Ubs Bank Usa	250,000	235,432.50	0.750%	11/17/21	11/18/24	841	QUARTERLY
Webbank Salt Lake City	250,000	235,295.00	0.750%	11/29/21	11/29/24	852	QUARTERLY
Medallion Bank Salt Lake City	250,000	235,707.50	0.900%	12/20/21	12/20/24	873	QUARTERLY
Beal Bank	250,000	235,550.00	0.950%	01/19/22	01/15/25	899	QUARTERLY
Barclays Bk	250,000	239,362.50	1.700%	03/09/22	03/10/25	953	QUARTERLY
Goldman Sachs Bk	250,000	239,052.50	1.650%	03/09/22	03/10/25	953	QUARTERLY
Safra National Bk	250,000	241,085.00	2.000%	03/23/22	03/24/25	967	QUARTERLY
Pentagon Federal Cr Un	250,000	240,987.50	2.000%	03/28/22	03/28/25	971	QUARTERLY
Beal Bank	250,000	242,245.00	2.200%	04/06/22	04/02/25	976	QUARTERLY
JP Morgan Chase	250,000	244,130.00	2.500%	04/08/22	04/08/25	982	QUARTERLY
First Natl Bank	250,000	242,140.00	2.200%	04/12/22	04/11/25	985	QUARTERLY
One Community Bank	250,000	245,245.00	2.700%	04/29/22	04/29/25	1,003	QUARTERLY
Americu Credit Union	250,000	245,882.50	2.800%	05/02/22	05/02/25	1,006	QUARTERLY
Synchrony Bank Retail	250,000	247,790.00	3.100%	05/20/22	05/20/25	1,024	QUARTERLY
Connexus Credit Union	250,000	247,085.00	3.000%	05/26/22	05/27/25	1,031	QUARTERLY
Bmo Harris Bank	250,000	248,027.50	3.150%	06/17/22	06/17/25	1,052	QUARTERLY
Saco Biddeford	250,000	245,962.50	2.850%	06/17/22	06/17/25	1,052	QUARTERLY
Baxter Credit Union	250,000	250,000.00	3.400%	06/28/22	06/30/25	1,065	QUARTERLY
Capital One Bank	250,000	249,360.00	3.350%	06/29/22	06/30/25	1,065	QUARTERLY
American First Cr Un	250,000	248,620.00	3.250%	07/15/22	07/15/25	1,080	QUARTERLY
Trustone Financial Cr Un	250,000	248,620.00	3.250%	07/19/22	07/21/25	1,086	QUARTERLY
American Natl Bank	250,000	247,512.50	3.100%	07/27/22	07/28/25	1,093	QUARTERLY
TCM Bank	250,000	249,292.50	3.350%	07/28/22	07/28/25	1,093	QUARTERLY
Negotiable CD TOTAL	\$ 13,245,000	\$ 12,948,633					
CD TOTAL	\$ 13,245,000	\$ 12,948,633					

**City of Clovis
Municipal Securities
As of July 31, 2022**

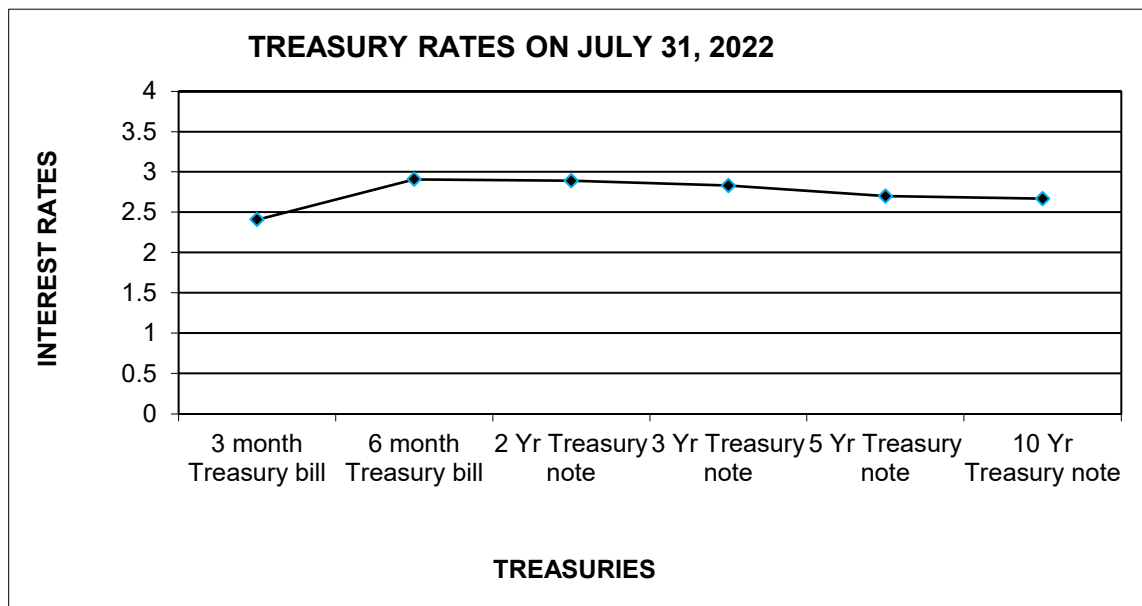
AGENDA ITEM NO. 2.

Municipal Securities	COST	MARKET PRICE	INTEREST RATE	INVEST DATE	MATURITY DATE	MATURITY FROM 07/31/22	INTEREST FREQUENCY
Huntington Beach Pension Bond	1,000,000	971,050	0.381%	04/01/21	06/15/23	319	QUARTERLY
Fresno Unified Taxable Go Ref Bond	500,000	486,340	0.462%	09/30/20	08/01/23	366	QUARTERLY
Pomona Cali Uni Sch Dist Go Bond	815,000	793,851	0.534%	10/20/20	08/01/23	366	QUARTERLY
San Jose CA USD Ref Bond	775,000	752,897	0.221%	01/20/21	08/01/23	366	QUARTERLY
Vista CA USD Ref Bond	750,000	728,573	0.221%	01/20/21	08/01/23	366	QUARTERLY
William Hart Cali HS Go Bond	1,000,000	971,270	0.366%	12/23/20	08/01/23	366	QUARTERLY
Jefferson Cali Elem Sch Dist Go Bond	710,000	688,551	0.399%	10/27/20	09/01/23	397	QUARTERLY
Santa Rosa Calif Watr Ref Bond	350,000	340,085	0.578%	12/01/20	09/01/23	397	QUARTERLY
California St Univ Ref Bond	3,455,000	3,335,906	0.475%	04/01/22	11/01/23	458	QUARTERLY
Santa Ana College Ref Bond	440,000	417,872	0.644%	12/17/21	08/01/24	732	QUARTERLY
Antelope Valley CA Ref Bond	750,000	715,448	1.767%	05/12/22	08/01/25	1,097	QUARTERLY
Chabot Las Positas Cmnty Clg Bond	1,490,000	1,397,784	0.880%	04/29/22	08/01/25	1,097	QUARTERLY
Santa Ana CCD Ref Bond	250,000	232,205	0.744%	05/12/22	08/01/25	1,097	QUARTERLY
Los Angeles CA USD Ref Bond	1,000,000	930,750	1.455%	11/15/21	07/01/26	1,431	QUARTERLY
Chabot Las Positas Cmnty Clg CA	3,505,000	3,234,134	1.080%	07/27/22	08/01/26	1,462	QUARTERLY
Chaffey CA High School Ref Bond	1,565,000	1,523,152	2.475%	06/30/22	08/01/26	1,462	QUARTERLY
Huntington Beach HS Dist Ref Bond	3,305,000	3,027,876	1.208%	04/29/22	08/01/26	1,462	QUARTERLY
Placentia Yorba USD Ref Bond	1,110,000	1,019,868	1.070%	05/31/22	08/01/26	1,462	QUARTERLY
San Diego CA Cmnty Ref Bond	470,000	455,040	2.299%	04/29/22	08/01/26	1,462	QUARTERLY
San Ramon Valley CA USD Ref Bond	2,125,000	1,954,766	1.147%	11/03/21	08/01/26	1,462	QUARTERLY
Sonoma Cnty Jr College Ref Bond	2,000,000	1,940,780	2.447%	06/30/22	08/01/26	1,462	QUARTERLY
Fremont CA USD Ref Bond	1,140,000	1,076,684	2.000%	05/31/22	08/01/27	1,827	QUARTERLY
Mun. Securities TOTAL	\$ 28,505,000	\$ 26,994,880					
Municipal Securities TOTAL	\$ 28,505,000	\$ 26,994,880					

**CITY OF CLOVIS
FINANCE DEPARTMENT
JULY 31, 2022 TREASURY RATES**

Treasury Rates as of July 31, 2022

3 month Treasury bill	2.41
6 month Treasury bill	2.91
2 Yr Treasury note	2.89
3 Yr Treasury note	2.83
5 Yr Treasury note	2.70
10 Yr Treasury note	2.67



As indicated in the above graph, treasuries increase from 3-month to 6-month notes, then decrease slightly to 10-year notes.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Finance Department

DATE: December 5, 2022

SUBJECT: Finance – Receive and File – Treasurer’s Report for the Month of July 2022.

ATTACHMENTS: 1. Summary of Cash Balances
2. Summary of Investment Activity
3. Investments with Original Maturities Exceeding One Year

Attached for the Council’s information is the Treasurer’s Report for the month ended July 31, 2022.

Pursuant to Section 41004 of the Government Code of the State of California, the City Treasurer is required to submit a monthly report of all receipts, disbursements, and fund balances. Attachment 1 provides a summary of the beginning balance, total receipts, total disbursements, ending balance for all funds, and a listing, by fund, of all month end fund balances. Attachment 2 summarizes the investment activity for the month and distribution, by type of investment, held by the City. Attachment 3 lists all investments with original maturities exceeding one year as of the month ended July 31, 2022.

Prepared by: Jeffrey Blanks, Deputy Finance Director

Reviewed by: City Manager *AK*

City of Clovis
Statement of Cash Balances
As of July 31, 2022

AGENDA ITEM NO. 3.

Previous Balance		\$	4,733,180.84
Deposits			54,571,235.15
Disbursements			(54,434,424.63)
Current Balance		\$	<u>4,869,991.36</u>
<u>FUNDS</u>			<u>BALANCE</u>
100	General Fund	\$	19,951,993.42
201	Local Transportation		20,535,237.61
202	Parking and Business Improvements		135,515.06
203	Off Highway Use		71,295.21
204	Community Facilities District 2020-1		103,702.77
205	Senior Citizen Memorial Trust		55,175.93
207	Landscape Assessment District		6,920,578.50
208	Blackhorse III (95-1) Assessment District		103,010.77
301	Park & Recreation Acquisition		12,004,549.10
305	Refuse Equipment Reserve		2,151,591.31
310	Special Street Deposit Fund		40,470,401.72
313	Successor Agency		699,170.09
314	Housing Successor Agency		1,327,142.13
402	1976 Fire Bond Redemption		25,475.23
404	1976 Sewer Bond Redemption Fund		411,524.15
501	Community Sanitation Fund		15,463,509.12
502	Sewer Service Fund		37,134,923.53
504	Sewer Capital Projects-Users		524,140.82
506	Sewer Capital Projects-Developer		3,987,721.25
507	Water Service Fund		41,510,490.09
508	Water Capital Projects-Users		7,142,335.27
509	Water Capital Projects-Developer		13,078,865.16
515	Transit Fund		4,233,195.79
540	Planning & Development Services		16,461,599.20
601	Property & Liability Insurance		312,568.64
602	Fleet Maintenance		21,942,289.33
603	Employee Benefit Fund		1,161,896.43
604	General Government Services		35,499,019.26
701	Curb & Gutter Fund		162,651.43
703	Payroll Tax & Withholding Fund		1,448,664.48
712	Temperance/Barstow Assmt Dist (98-1)		76,756.19
713	Shepherd/Temperance Assmt Dist (2000-1)		5,796.81
715	Supp Law Enforcement Serv		2,293.51
716	Asset Forfeiture		201,320.80
720	Measure A-Public Safety Facility Tax		1,607.26
736	SA Admin Trust Fund		1,421.40
741	SA Debt Service Trust Fund		(943,636.28)
747	Housing Successor Trust Fund		1,137.98
SUBTOTALS		\$	<u>304,376,930.47</u>
999	Invested Funds		<u>(299,506,939.11)</u>
TOTAL		\$	<u><u>4,869,991.36</u></u>

City of Clovis
Summary of Investment Activity
For the month of July 31, 2022

Balance of Investments Previous Month End		\$ 314,929,723.22
Time Certificates of Deposit Transactions		
Investments	1,000,000.00	
Withdrawals	(250,000.00)	
Total CD Changes		750,000.00
Other Changes		
Government Securities	0.00	
Local Agency Investment Fund	139,501.56	
Municipal Securities	3,505,000.00	
Sweep Account	(19,817,285.67)	
Total Other Changes		(16,172,784.11)
Balance of Investments Current Month End		\$ 299,506,939.11

City of Clovis
Distribution of Investments
As of July 31, 2022

Insured CD's	13,245,000.00
Government Securities	131,232,709.85
US Treasury Notes	0.00
Local Agency Investment Fund	74,651,232.78
Municipal Securities	28,505,000.00
Sweep Account	51,872,996.48
Investment Total	\$ 299,506,939.11

City of Clovis
Original Maturities Exceeding One Year
As of July 31, 2022

Institution	Face Value	Investment	Maturity	Stated Rate
		Balance At Amortized Cost		
FFCB	3,000,000.00	3,001,715	8/22/2022	1.625%
FHLB	6,000,000.00	6,021,482	9/9/2022	2.000%
FFCB	3,000,000.00	2,994,423	10/11/2022	1.375%
FFCB	5,000,000.00	5,003,235	10/13/2022	1.600%
FHLB	5,000,000.00	5,019,684	12/9/2022	1.875%
FHLB	8,000,000.00	8,018,286	12/9/2022	1.875%
FAMCMTN	8,500,000.00	8,521,148	2/27/2023	1.350%
FHLB	13,000,000.00	13,282,915	3/10/2023	2.125%
FHLB	5,000,000.00	5,128,598	3/10/2023	2.125%
FFCB	5,000,000.00	5,000,000	3/1/2024	0.250%
FFCB	2,000,000.00	1,999,174	3/18/2024	0.300%
FHLB	5,000,000.00	5,000,000	6/7/2024	0.350%
FHLB	5,000,000.00	4,972,423	11/15/2024	1.050%
FHLB	4,000,000.00	3,982,075	2/28/2025	1.750%
FHLB	4,000,000.00	4,000,000	4/25/2025	2.750%
FAMCMTN	4,000,000.00	3,953,028	7/28/2025	0.750%
FAMCMTN	5,000,000.00	4,953,442	9/8/2025	0.600%
FHLB	5,000,000.00	4,966,655	2/11/2026	0.580%
FHLB	4,000,000.00	3,928,967	2/24/2026	0.750%
FFCB	5,000,000.00	4,969,955	9/28/2026	0.940%
FHLB	4,000,000.00	3,649,200	10/28/2026	1.150%
FHLB	6,000,000.00	5,988,899	11/24/2026	1.250%
FHLB	5,000,000.00	5,119,620	12/11/2026	2.125%
FHLB	4,500,000.00	4,043,250	2/24/2027	1.020%
FHLB	4,000,000.00	3,714,537	2/26/2027	0.900%
FHLB	4,000,000.00	4,000,000	3/8/2027	2.375%



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: December 5, 2022

SUBJECT: General Services - Approval - Waive Formal Bidding or Proposal Requirements and Authorize Lease of Copiers through Cooperative Purchase Contract between OMNIA Partners and Kyocera.

ATTACHMENTS: None

CONFLICT OF INTEREST

None.

RECOMMENDATION

For Council to waive formal bidding or proposal requirements and authorize staff to lease copiers through a competitively bid Cooperative Purchase Contract between OMNIA Partners and Kyocera through May 31, 2023, and any approved extension periods, up to and including May 31, 2025.

EXECUTIVE SUMMARY

The City is currently contracting with C.A. Reding for the leasing of copiers through December 15, 2022. Staff recommends utilizing the OMNIA Partners cooperative purchase contract with Kyocera for acquisition of copiers. Waiving the City's formal bidding or proposal process for procuring leases for copiers and instead using a competitively bid cooperative purchase contract is authorized by Clovis Municipal Code Section 2.7.06(a) and Section IV.C. of the City's Purchasing Manual.

Kyocera was recently awarded a three (3) year contract by OMNIA Partners from June 1, 2020, through May 31, 2023, with two (2) 1-year renewal options. OMNIA Partners, Public Sector is a public sector purchasing organization for state and local governments, K-12 education, colleges, and universities. All contracts awarded by OMNIA have been competitively solicited and publicly awarded by a government entity serving as the lead agency while utilizing industry best practices and processes. The solicitation and award process used by OMNIA is comparable to the City's formal proposal process for the procurement of equipment/copiers and purchasing/leasing through this cooperative purchase contract is authorized pursuant to Section IV.C. of the City's Purchasing Manual.

BACKGROUND

The City is currently leasing copiers with C.A. Reding through December 15, 2022. Staff recommends utilizing the OMNIA Partners cooperative contract for the leasing of copiers with Kyocera via a third-party agreement with California Business Machines.

California Business Machines, the local Kyocera copier dealer located in Fresno, CA, formally served as the City's copier leasing vendor from 2014 to 2019 with an excellent service record among staff. California Business Machines proposes to provide the City a complete service, inclusive of OMNIA Partners guaranteed lowest pricing per OMNIA Contract #R191102.

Procurement

Region 4 Education Service Center (ESC), as the Principal Procurement Agency, has partnered with OMNIA Partners to make the resultant contract (also known as the "Master Agreement" in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies"), through OMNIA Partners' cooperative purchasing program. The Region 4 ESC is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a "Participating Public Agency").

Kyocera was awarded Contract #R191102, a cooperative contract offered through OMNIA Partners, formally known as National IPA and U.S. Communities. OMNIA Partners is a cooperative purchasing organization, offering cooperative contracts to the public sector which have been competitively solicited and publicly awarded by a lead agency using applicable procurement laws and regulations.

The lead agency in this case, Region 4 ESC, issued a Request for Proposals (RFP) for copiers as detailed in the RFP 19-11 [Kyocera Document Solutions America, Inc. Cooperative Contract | Contract Documentation \(OMNIApartners.com\)](#). The RFP's public notice was listed in multiple states on numerous occasions. Five proposals were submitted and evaluated by an evaluation committee. Kyocera was the awarded agency and entered into a contract with Region 4 ESC, from June 1, 2020, through May 31, 2023, with options for two (2) 1-year extensions through May 31, 2025.

The City of Clovis is a registered member with OMNIA Partners and has utilized their services in the past with a high level of satisfaction.

FISCAL IMPACT

The City is expecting to lease 15 copiers. Depending upon models selected by the departments, the total annual cost is approximately \$25,000. The City's projected needs for copiers are within the FY22/23 budget allocation for these products.

REASON FOR RECOMMENDATION

Staff recommends authorizing use of OMNIA cooperative contract with Kyocera through a third-party agreement with California Business Machines. California Business Machines has serviced the City for copier leases in the past with a great reputation among City staff.

Pursuant to the City's purchasing requirements, purchases of items/services exceeding \$60,000.00 require City Council approval following a formal bidding or proposal process, unless waived by the City Council. Waiving the City's formal bidding or proposal process for procuring a contract for the leasing of copiers and instead using a competitively bid cooperative purchase contract is authorized by Clovis Municipal Code, Section 2.7.06(a) and Section IV.C. of the City's Purchasing Manual.

ACTIONS FOLLOWING APPROVAL

Staff will forward copier request forms to each department for their selection of desired unit and forward 60-month leases for City Manager to sign. The remaining initial contract term is from June 1, 2020 – May 31, 2023, and may thereafter be extended annually one year at a time for a total of two (2) years (up to May 31, 2025) upon mutual agreement of OMNIA and Kyocera.

Prepared by: Stephen Frankian, Facilities Maintenance and Purchasing Manager

Reviewed by: City Manager *AK*



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services

DATE: December 5, 2022

SUBJECT: General Services – Approval – Waive the City’s Usual Purchasing Requirements and Authorize the Purchase of Eight (8) Ram Promaster Minibuses and Three (3) Class E 32’ Freightliner Buses for \$2,074,048.63 Utilizing the CalACT Competitive Bid Award; and Approval – Res. 22-____, Amending the 2022-2023 Transit Budget by \$349,048.63 in Previously Received State Transit Assistance Funds.

ATTACHMENTS: 1. Resolution 22-____, and Budget Amendment
2. Quote from Creative Bus Sales

CONFLICT OF INTEREST

None.

RECOMMENDATION

For the City Council to waive the usual purchasing requirements and authorize the City Manager to approve the purchase of eight (8) Ram Promaster Minibuses and three (3) Class E 32’ Freightliner buses for \$2,074,048.63 utilizing the California Association for Coordinated Transportation (CalACT) competitive bid award; and for the City Council to approve a resolution amending the 2022-2023 Transit budget to add \$349,048.63 in previously received State Transit Assistance Funds.

EXECUTIVE SUMMARY

Staff recommends the purchase of eight (8) Ram Promaster Minibuses and three (3) Class E 32’ Freightliner as replacement and additional vehicles to be used for Round Up and Stageline transit services. The purchase will aid in the delivery of transportation services to passengers using paratransit and fixed-route services. The cost of eight minibuses is \$1,310,100.04, and the cost of three Class E buses is \$763,948.59, for a total of \$2,074,048.63. There will be an additional nominal cost for installation of a two-way radio in each vehicle. The costs for the buses, minibuses, and associated expenses will be paid through a combination of State Transit Assistance (STA) and Senate Bill 1 State of Good Repair (SB1 SGR) funds already received.

BACKGROUND

Vehicle Purchase

In 2010, following the end of the Caltrans purchasing cooperative, the California Association for Coordinated Transportation (CalACT) created a purchasing cooperative administered by Basin Transit Authority to assist small and medium sized transit agencies with vehicle procurements. In 2021, CalACT completed its most recent extension of the contract and renewed the cooperative for transit vehicles using multiple vendors for a variety of buses, vans, and zero-emission vehicles. In early 2022, CalACT was requested to impose force majeure pricing on the cooperative due to unforeseen hyperinflation of chassis prices and materials and wages. A comprehensive *Cost Analysis for Bus and Vans* was completed and in August 2022, and a new pricing structure was published which reflected increases ranging from 9.26% - 62.4%, depending upon the vehicle.

The CalACT purchasing cooperative awards bid positions in accordance with the Federal Transit Administration and California Department of Transportation regulations and has been audited by both agencies with no findings. The purchasing cooperative is also compliant with Buy America requirements. The purchase of transit vehicles requires technical expertise and a broad scope of knowledge of bus manufacturing concepts. By utilizing the cooperative, Clovis Transit can purchase the vehicles our operation needs at a competitive cost. More than 250 transit agencies, including Caltrans, have purchased vehicles from the CalACT purchasing cooperative. Like Caltrans did prior to the formation of the CalACT purchasing cooperative, CalACT charges a 1.5% procurement fee.

Vehicle specifications and options were listed in the CalACT request for proposal and the vendor's proposals. These specifications meet or exceed the transit operation's desired vehicle design and capacity. The minibuses are designed to hold up to seven (7) passenger or three (3) passengers using mobility devices, yet they are operated by a driver with a regular Class C license. This will provide additional flexibility to the transit operation during the chronic commercial license driver shortage.

Additionally, this purchase includes three Class E 32' Freightliner buses to replace three 2008 Glaval buses with high mileage. Clovis Transit currently has three 2017 Freightliner 32' buses in service on Stageline which have been reliable.

FY2022-2023 Transit Budget Amendment

A budget amendment is required for the FY2022-2023 budget to account for expenditure of \$349,048.63 in previously received State Transit Assistance (STA) as follows:

Transit Fund 515: Increase expenditure budget for vehicle purchase by \$349,048.63 for the vehicle purchase. The increase will be added to the already budgeted amount for FY 2022-23.

FISCAL IMPACT

Adequate State Transit Assistance (STA) and SB1 State of Good Repair (SB1 SGR) funds are held in the City's Transit fund account for the purchase of the vehicles. Those funds will be added to the current budget with the budget amendment shown in Attachment 1.

Pricing for the recommended purchase is as follows:

- Proposed eight (8) Ram Promaster Minibuses including tax, options, and procurement fee: \$1,310,100.04.
- Proposed three (3) Class E 32' Freightliners including tax, options, and procurement fee: \$763,948.59

Total: \$2,074,048.63

Details regarding pricing are in the quote from Creative Bus Sales in Attachment 2.

REASON FOR RECOMMENDATION

Public transit vehicles are generally retired after 12 years of service and/or 250,000 miles. Clovis Transit's fleet currently has 12 vehicles over 250,000 miles with an average of 317,668 miles, the highest at 364,701 miles. The chosen vehicles have performed well, and the minibuses can be operated by drivers with a Class C license, thereby providing additional flexibility to operations staff to maintain service levels. Clovis Transit's use of the CalACT bid is within the City of Clovis Purchasing Policy, Section IV, C, 1, b, (1).

ACTIONS FOLLOWING APPROVAL

Finance will amend the Transit FY2022-2023 budget to reflect the budgetary changes to expenditure accounts. A purchase order will be prepared for the City Manager's approval and the vehicles will be ordered. The vehicles are expected to be delivered in 240 days.

Prepared by: Amy Hance, General Services Manager

Reviewed by: City Manager *AH*

RESOLUTION 22-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING AMENDMENTS TO THE FY 2022-2023 GENERAL SERVICES DEPARTMENT

WHEREAS, the City Council adopted the FY2022-23 Budget on June 13, 2022; and

WHEREAS, the City of Clovis has previously received State Transit Assistance (STA) funds for transit capital purchases; and

WHEREAS, prior allocations of STA funds were not expended and remain in the Transit Fund awaiting allocation; and

WHEREAS, the City Council has approved the expenditure of STA and SB1 State of Good Repair (SB1 SGR) for the purchase of eight (8) new wheelchair accessible minibuses and three (3) Class E 32' buses; and

WHEREAS, the STA funds were not originally included in the FY 2022-23 General Services budget.

NOW, THEREFORE BE IT RESOLVED, that the City of Clovis hereby approves the budget amendment shown in the "Summary of Expenditures/Revenues by Department" "Summary of Expenditures/Revenues by Fund", attached 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 December 5, 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: December 5, 2022

Mayor

City Clerk

Attachment A

SUMMARY OF EXPENDITURES BY DEPARTMENT

DEPARTMENT – GENERAL SERVICES

Transit	<u>\$349,048.63</u>
TOTAL DEPARTMENT	<u>\$349,048.63</u>

SUMMARY OF EXPENDITURES BY FUND

Transit	<u>\$349,048.63</u>
TOTAL FUND	<u>\$349,048.63</u>

SUMMARY OF REVENUES BY DEPARTMENT

DEPARTMENT – GENERAL SERVICES

Transit	<u>\$349,048.63</u>
TOTAL DEPARTMENT	<u>\$349,048.63</u>

SUMMARY OF REVENUE BY FUND

Transit	<u>\$349,048.63</u>
TOTAL FUND	<u>\$349,048.63</u>

NET GENERAL FUND SUPPORT

TOTAL	\$0
-------	-----



Creative Bus Sales

14740 Ramona Avenue
Chino, CA 91710
888.633.8380

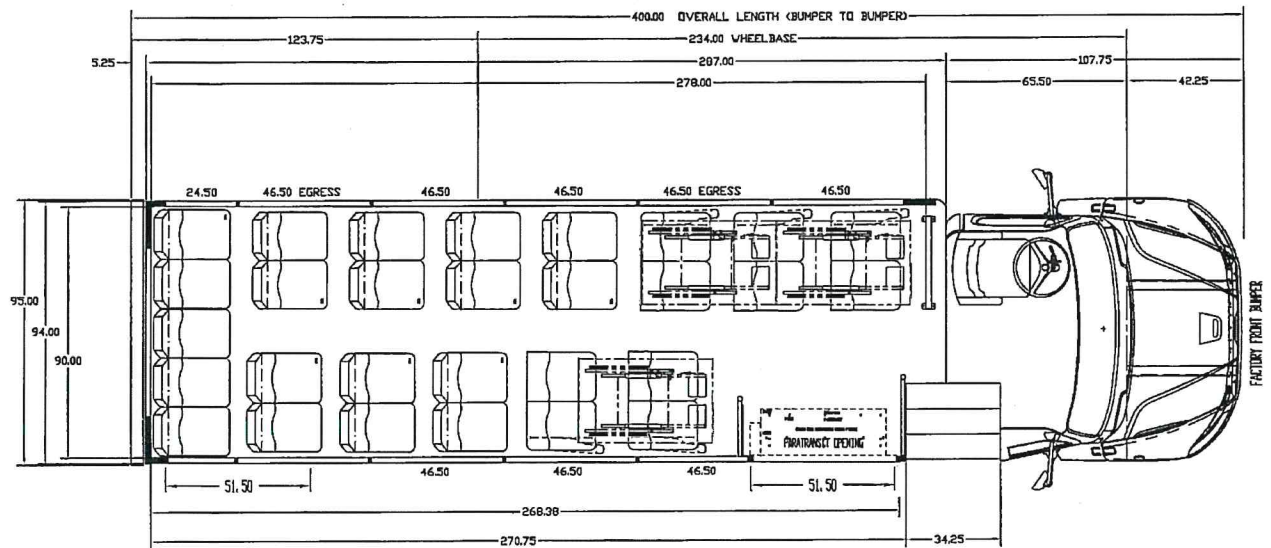


Creative Bus Sales

7471 Reese Road
Sacramento, CA 95828
888.633.8380

AGENDA ITEM NO. 5.

11/10/2022 CalACT MBTA RFP #20-01 - Class E - Quote Sheet (Rev 2022)				
Vehicle Type:	Class E - Starcraft Bus (Allstar XL)		Type of Lift:	☒ Braun
Contact:	Bethany Berube		Lift Location:	☐ Front ☐ Rear
Agency:	City of Clovis - Transit		Seat Material Level:	Level 4 - REPEL
Address:	155 N. Sunnyside Avenue		Seat Color:	TBD
City, State, Zip:	Clovis, CA 93611		Flooring and Color:	Altro - Grey
Phone:	559.324.2771		Salesperson:	Steve Chung
E-Mail:	BethanyB@ci.clovis.ca.us		Salesperson Cell:	909.549.9398
Delivery:	8 to 9 months from receipt of order		Salesperson E-Mail:	stevec@creativebussales.com
Quantity:	Description	Price	Ext. Price	ADA
1	Starcraft Bus - Class E - (Freightliner S2C) 32'	\$182,196.00	\$182,196.00	\$11,790.00
Published Options				
5	1 - Freedman Foldaway Seat (double)	\$2,070.00	\$10,350.00	\$58,950.00
1	10 - OEM Drivers Seat - Standard W/ Air Ride Suspension	Standard	Standard	
1	23 - Additional Mobility Aid position 8100's (w/tie downs) / SLIDE AND CLICK	\$705.00	\$705.00	\$11,790.00
1	35 - Braun NCL 1000 (1k lbs capacity lift)	\$800.00	\$800.00	\$11,790.00
1	37 - Lift Pad Cover	\$300.00	\$300.00	\$11,790.00
1	43 - REI PA system (4 interior, 1 exterior ADA speaker)	\$460.00	\$460.00	
1	70 - Intermotive Break Out Box (Multi Access Hub)	Standard	Standard	Standard
1	74 - CrossOver Mirror	\$130.00	\$130.00	
1	75 - Roof Vent (SafeFleet)	\$310.00	\$310.00	
1	76 - Rear Tow Hooks	\$155.00	\$155.00	
1	81 - Dialight Exterior LED	\$1,055.00	\$1,055.00	
1	85 - Farebox rail/prewire	\$182.00	\$182.00	
1	92 - Rear Backup Camera and Monitor	Standard	Standard	
1	106 - Stop Request System (w/ sign)	\$1,000.00	\$1,000.00	\$1,000.00
1	110 - Twin Vision Front and Side LED Dest sign (Mobilite)	\$5,240.00	\$5,240.00	\$5,240.00
1	115 - Delivery Zone 3	\$1,150.00	\$1,150.00	
Non-Published Options				
1	OEM AIR RIDE SUSPENSION	\$1,000.00	\$1,000.00	
1	FULL BODY PAINT - TEAL W/ BLACK OUT AROUND WINDOWS (ROOF WHITE)	\$9,000.00	\$9,000.00	
1	AM/FM STEREO WITH 6-SPEAKERS	\$895.00	\$895.00	
1	APOLLO CAMERA SYSTEM - 6-CAMERAS	\$7,500.00	\$7,500.00	
1	A/C - Thermo King TK SR-50C - (110k BTU's - IMACA)	\$12,775.00	\$12,775.00	
1	Bike Rack - Sportworks (Apex 3 Bike)	\$3,595.00	\$3,595.00	
24	Freedman - ABS Back (Each)	\$75.00	\$1,800.00	
		Class E - Base Price	\$182,196.00	
		Published Options	\$21,837.00	
		Non-Published Options	\$36,565.00	
		Total	\$240,598.00	\$112,350.00
		Doc Prep Fee	\$85.00	
The Non-Taxable Amount is the ADA Equipment in the Base and Added as Options		Non-Taxable	\$112,350.00	
The Taxable Amount Includes the Mobility Rebate of \$1,000.00 For Ford Chassis		Taxable Amount	\$129,333.00	
Clovis*	330	Tax Total	\$10,314.31	7.975%
		Sub-Total	\$250,997.31	
		CalACT Fee	\$3,608.97	
		DMV E-File Fee:	\$31.00	
		DMV Fee	\$0.00	(Estimated)
		Tire Fee	\$12.25	
		Local Delivery	\$0.00	
		Total	\$254,649.53	
		Number of Units	3	
		Total Cost for 3-Units	\$763,948.59	
Purchasing of vehicles requires a CALACT membership, letter of assignment, and payment of procurement fee. If you have any questions, please contact CALACT direct at 916-920-8018				



				PART NO. CB002271		MATERIAL: FREEMAN SEATS - MID HC FEATHERWEIGHT		PURCH./MFG.: MFG	
				CHAMPION BUS INC.		TOLERANCES UNLESS OTHERWISE NOTED		TITLE:	
				A THOR COMPANY		XX = .05		FLOORPLAN #2 DF331 RL	
				ECN # N/A		XXX = .020		234.00' W/B 287.00' FLOOR	
				DO NOT		X" = 1"		MODEL	
						SCALE:		APP'D	
								DATE:	



*Bus photo is not to exact specifications

Class E Standard Build Options

PS/2 FREIGHTLINER S2C - 96" WIDE				1
Freightliner S/2 25,850 GVWR - Mechanical Suspension - Hydraulic Brakes				1
PS/2 32 96" WIDE 238" WB Cummins 6.7L 240HP Allison 2200 PTS	ST	20901		1
SPECIAL INSTRUCTIONS OR NOTES				1
SEE BOTTOM OF ORDER FRO WARRANTY				1
Dealer to Perform 4-Wheel Alignment in California				1
Dealer to Weigh Each Bus on California Certified Scale				1
No Tow Vehicle Allowed During Delivery				1
Use 250 lbs Per Wheelchair Position				1
Parts Manual with As-built Electrical Schematics				1
All Excessories Except Lights, WC Lift & Mobile Radio (If Equipped) Are Ignition Hot				1
Wiring Harnesses Supported Every 24" Maximum				1
No Butt Connectors Allowed				1
If Driver Switch Panel is on Engine Cover, Then a Quick Disconnect is Required				1
Fast Idle: 1500 RPM on Gas - Fast Idle to Engage if Voltage Drops Below 12.5 VDC or if				1
Install Dome Light With Every Row of Seats, Including WC Position, Must Meeting 8				1
Hip-To-Knee Spacing 27" Minimum				1
Seat Track Not Extend More than 6" Past Seats				1
Undercoat Metal Skirts				1
Ground to First Step Height Shall Not Exceed 12.5" Unloaded				1
304SS Required for Entry Grabs and Ceiling Grabs				1
Ceiling Grab Rails Require Formed Elbows - No End Caps				1
AC & Heater Hoses Supported Every 24" Minimum				1
Build Front Driver Storage Compartment as Large as Possible, For Storage of Tiedown				1
Install Toolbox Next to Lift if Space Allows				1
Convex Mirror Must Avoid Sun Visor and Overhead Door				1
Headlight Aiming Certificate - Ship with Bus				1
Water Test Certificate - Ship with Bus				1
Driveline Metal Guards for Each Section of Shaft				1
All Harnesses Secured to Frame at Maximum of 24"				1
P-Clamps Added as Deemed Necessary by MBTA Inspector				1
Batteries Must Be Same Type (No Mismatch) (1 In Tray - 1 Underhood)				1
Continuous Run Battery Cables				1
Slide Blocks To Hold Batteries In Place				1
Floor Track Will Not Be Installed in Any Area not Covered by a Fixed Seat				1
Operations Manual - Covering Conversion Features as Listed				1
Parts Book, Operating Instructions, Troubleshooting Guide, Inspection & Service Guide,				1
SPECIAL BUILD ORDER				1
Driver Entry Grab Steel Reinforced Plastic - Nutsert Install	ST	99		1
(3) GROUND WIRES TO BE ZERO OUGHT GAUGE, TO BE CONTINUOUS WITHOUT	ST	99		1
Interlock on Entry Door - Must Be in Park to Operate	ST	99		1
ENTRY DOOR HEADER ACCESS PANEL DOOR MUST BE HINGED WITH 2 THUMB	ST	99		1
Battery Tray: SS Tray & Slides Per Standard Options Below. Must Extend at Least 3"	ST	99		1
Install Battery Cable Wiring Diagram Inside Battery Access Door	ST	99		1
Decal: Battery Disconnect, Emergency Use Only	ST	99		1
Stainless Steel Battery Hold-Down Hardware	ST	99		1
Add 2nd Heater Line Brass 1/4 Turn Valve	ST	99		1
Decal: "Heater Shut Off Valve" - Install On Street Side Near Valves	ST	99		1
KEYED LOCK ILO THUMB LATCH FOR ELECTRICAL CENTER DOOR	ST	99		1
5/8", 7 Ply AC Marine Grade APA Plywood Floor	ST	99		1
Upgrade Driver Plexi Barrier: Extend to Within 6" of Ceiling	ST	99		1
14 Gauge Galvanized Steel Wheelwells	ST	99		1
Dual Handles on WC Lift Doors	ST	99		1
Laminated Modesty Panel, Grey Melamine, Each	ST	99		2
Intermotive Break Out Box	ST	99		1
GENERIC PARTS MANUAL ON FLASH DRIVE	ST	99		1
ELECTRICAL SYSTEM				
Intermotive Flex Tech Electrical System	05	STD		1
SIDEWALL / REARWALL / CEILING				
Sidewall: Grey FRP	05	STD		1
Driver Area: Grey Padded Vinyl	05	STD		1
FRP on Ceiling, Grey	05	22000		1
FRP on Rearwall, Grey	05	22001		1
Cove Colored Flooring on Sidewall to Seat Track	05	22005		1
FLOORING				
Altro Meta Storm	05	22014		1
Yellow Step Nosing per Step	05	22016		4
Standard Floor 2 Step Entry with Extra Step Behind Driver (F550 only)	05	STD		1
CHASSIS				



*Bus photo is not to exact specifications

HEAVY DUTY DRIVER RUNNING BOARD ** F-550 ONLY	05	22503	1
Romeo Rim Rear Bumper w/HawkEye RAS Installed	05	22035	1
Valve Stem Extender Inner Dual Rear Wheel, pair	05	22040	1
ENVIRONMENTAL CONTROL			
TRANS/AIR FREIGHTLINER 6.7L OPTIONS (Hydraulic Brakes Only - AIR call for quote) *** ALL CHASSIS ORDERED WITH OEM A/C ONLY			
TA SUPER 13 80K SYSTEMS 13 CID COMPRESSOR CHOOSE SINGLE TALL SKIRT OR ROOF MOUNT CONDENSER			
TA774C SUPER 13 TA77 EVAP SC4 TALL COND 13 CID COMP	05	20058	1
HEATERS			
Hot Water Heater, 65K BTU - Floor Mounted	05	20083	1
MISCELLANEOUS			
Silicone Heater Hose (for rear unit) w/full ring clamps	05	22076	1
ELECTRICAL			
Stainless Steel Battery Box & Tray	05	22089	1
Rotary Disconnect Switch	05	22092	1
Laminated Wiring Schematic ***AS BUILT*** ON ELECTRICAL PANEL DOOR	05	22101	1
EXTERIOR LIGHTS			
Surface Mount LED Entry Door Exterior Light - STD Choose Optional Below or Special builds	05	STD	1
LED Rear Center Mount Brake Light, Rectangular	05	20136	1
LED Mid-Ship Turn / Marker Lights REQUIRED 30' AND LONGER	05	20138	1
Independent RED Brake & AMBER Turn Signal Lights (per NJ specs)	05	20139	1
INTERIOR LIGHTS			
Additional Interior Lights (LED If Option Selected) Each	05	8041	3
AUDIO / VISUAL			
Jensen JHD36AB AM/FM/CD/Clock Blue Tooth/USB Enabled PA Ready 4 Spkrs	05	8830	1
DOORS / HATCH / WINDOWS			
Required: please select one passenger door option.			
Passenger Door Electric (Standard)	05	STD	1
Passenger Door 36" (Standard)	05	2063	1
Exterior Passenger Entrance Door Key	05	8133	1
Solid Window(s) EACH Replace T-Slide(s) Enter Specific Instructions in Row Below	05	20187	1
STREET SIDE REAR			1
INTERIOR			
Driver Coat Hook	05	8769	1
LUGGAGE RACK / STORAGE			
Driver Storage in Cab Overhead with Lock	05	20192	1
PARATRANSIT OPTIONS			
Double W.C. Doors w/ Windows, LED Interior Lights, Leaf Spring, LED Exterior Lighting	05	20206	1
4" Grommet Mount LED is STD. Use Special Builds for Optional Choices			1
IS THE LIFT IN THE FRONT OR REAR OF THE UNIT? REAR			1
Braun Century NCL917-2 800# Lift (33"x51")	05	8744	1
LIFT INTERLOCK			
Fast Idle w/Interlock - Intermotive GTWY508-F FORD F550 / F650 GAS	05	99	1
Q Straint W.C. Securement Kits, Accessories			
Q10007 - 4 QRT 360 Retractor Tie Down L track & Q8-6326-A1 Comb-Lap/Shldr	05	8826	2
Q5-7580-4 18" Blue Webbing Loops	05	20250	8
Q5-6327 84" Postural Belt with Padding - Black Webbing	05	20251	1
Q-Straint Belt Cutter (ship loose)	05	8179	1
SAFETY OPTIONS			
10 Lb Fire Extinguisher	05	8616	1
Body Fluid Kit	05	20264	1
Emergency Triangle Kit	05	8091	1
Back-Up Alarm SAE Type B 107 db(A) Ecco 575	05	2880	1
STANDARD ROSCO STSK4750 BACK-UP CAMERA SYSTEM W/ 7" REARVIEW MONITOR / MIRROR COMBO			
Interior Convex Mirror 6" x 9"	05	20276	1
Red Light Over Emergency Exit Ea: ON: SIDE & REAR EGRESS WINDOWS	05	8155	5
Yellow "Standee" Line	05	8802	1
GRAB RAIL / STANCHION / PANELS			
Ceiling Grab Rail - Install on Both Sides	05	99	1
Left Hand Entry Vertical Grab Rail - 1 1/4"		STD	1
1 1/4" Grab Rail Parallel to Entrance Steps (both sides)	05	8130	1
Stanchion and Modesty Panel at Entry Door		STD	1
Stanchion and Modesty Panel Behind Driver	05	20301	1
Add Tinted Plexiglass Upper Panel LOCATION: DRIVER	05	8146	1



*Bus photo is not to exact specifications

SEATING - DRIVER				
FREIGHTLINER DRIVER SEATING				
OEM Driver's Seat - National 2000 SRS Air Suspension - High Back, Black Cloth, 3-Point Lap & Shoulder Belt , RH Armrest - Ordered On Chassis		NOTE		1
SEATING - PASSENGER				
STD RIGID SEATS				
Mid High Double Seat	05	8067		12
PASSENGER SEAT FABRICS				
EUROPEAN OR AMERICAN WOOL QUOTED AT TIME OF ORDER!!!!				
Seat Cover - Level 4 Ice Pinstripe; Mor-Care; Leathermate	05	2074		24
SEAT OPTIONS				
Anti-Vandal Grab Handle, Black Ea on:	ALL SEATS EXCEPT AGAINST REAR WALL			
	05	2311		24
Black US Armrest - Each - on:	AISLE			
	05	2077		12
Flame Block Material on Underside of Seat (each)	05	2884		24
SEAT BELTS				
Seat Belt, Freedman USR Retractable (Per Person)	05	2282		24
Seat Belt Extension, 12" (P/N 56410) FOR USR SEAT BELTS	05	8771		2

SUMMARY OF STANDARD WARRANTIES

(Provide complete warranty information and parchment with proposal)

Warranty	Miles	Years
Body Structure	100,000	5
Chassis	50,000	3
Engine	Unlimited	2
Transmission	Unlimited	4
Air conditioner	Unlimited	2
Lift/Ramp	Unlimited	5
EV Battery	N/A	N/A
EV Conversion/Installation	N/A	N/A
CNG Warranty (Install and tanks)	N/A	N/A



Creative Bus Sales

14740 Ramona Avenue
Chino, CA 91710
888.633.8380



Creative Bus Sales

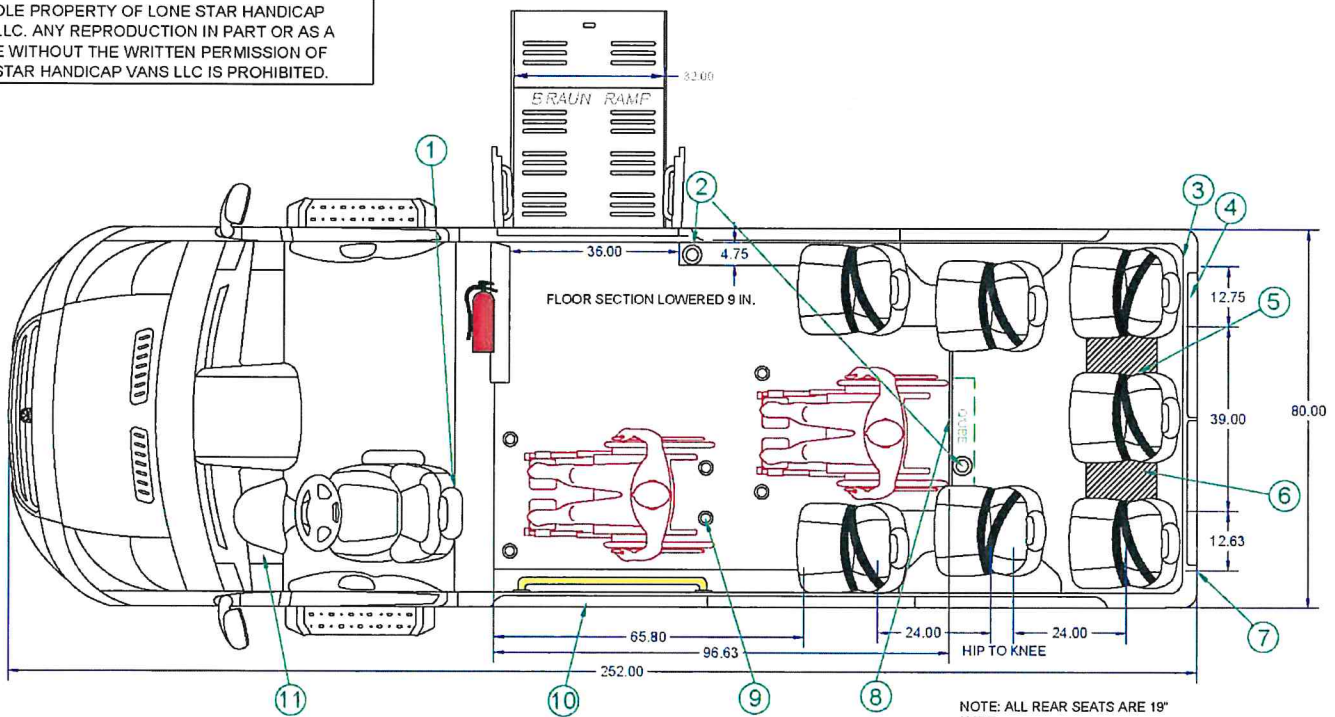
7471 Reese Road
Sacramento, CA 95828
888.633.8380

AGENDA ITEM NO. 5.

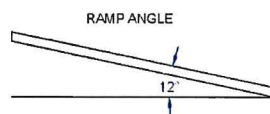
11/10/2022 CalACT MBTA RFP #20-01 - Class P - Quote Sheet (Rev 2022)				
Vehicle Type:	Class P - Braun (Lonestar)		Type of Ramp:	☒ Braun
Contact:	Bethany Berube		Ramp Location:	☒ Front ☐ Rear
Agency:	City of Clovis - Transit		Seat Material Level:	Level 4- Docket 90
Address:	155 N. Sunnyside Avenue		Seat Color:	Gray
City, State, Zip:	Clovis, CA 93611		Flooring and Color:	Gray
Phone:	559.324.2771		Salesperson:	Steve Chung
E-Mail:	BethanyB@ci.clovis.ca.us		Salesperson Cell:	909.549.9398
Delivery:	6 to 7 months from receipt of order		Salesperson E-Mail:	stevec@creativebussales.com
Quantity:	Description	Price	Ext. Price	ADA
1	Braun - Lonestar - Class P - 3500 159" 8-pass/2WC	\$146,700.00	\$146,700.00	\$73,665.00
Published Options				
1	10 - Credit for seat delete	-\$120.00	-\$120.00	
7	17 - USB charging ports (per seat, mounted under seat)	\$150.00	\$1,050.00	
1	39 - 2-Way radio prep	\$500.00	\$500.00	
1	49 - Horizontal Wall Grabrail at Wheelchair Position	Std	Std	Std
1	51 - Braun Ramp ILO OEM	Std	Std	Std
1	55 - Front Passenger Seat Delete and Storage Area	\$1,295.00	\$1,295.00	
1	61 - Antenna Prewire to Dash and Roof Mount Antenna	\$500.00	\$500.00	
1	67 - CrossOver Mirror	\$150.00	\$150.00	
1	99 - Delivery Zone 3	\$1,150.00	\$1,150.00	
2	114 - Additional programmed key fobs	\$495.00	\$990.00	
1	118 - Intermotive Idlelock	\$595.00	Quote	
7	133 - GO-ES 19" Seat	\$250.00	\$1,750.00	
Non-Published Options				
1	Exterior Decal Allowance	\$795.00	\$795.00	
		Class P - Base Price	\$146,700.00	
		Published Options	\$7,265.00	
		Non-Published Options	\$795.00	
		Total	\$154,760.00	\$73,665.00
		Doc Prep Fee	\$85.00	
The Non-Taxable Amount is the ADA Equipment in the Base and Added as Options		Non-Taxable	\$73,665.00	
The Taxable Amount Includes the Mobility Rebate of \$1,000.00 For Ford Chassis		Taxable Amount	\$82,180.00	
Clovis*		Tax Total	\$6,553.86	7.975%
		Sub-Total	\$161,398.86	
		CalACT Fee	\$2,321.40	
		DMV E-File Fee:	\$30.00	
		DMV Fee	\$0.00	(Estimated)
		Tire Fee	\$12.25	
		Local Delivery	\$0.00	0
		Total	\$163,762.51	Insert Miles
		Number of Units	8	
		Final Total	\$1,310,100.04	

Purchasing of vehicles requires a CALACT membership, letter of assignment, and payment of procurement fee.
If you have any questions, please contact CALACT direct at 916-920-8018..

CONFIDENTIAL AND PROPRIETARY
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF LONE STAR HANDICAP VANS LLC. ANY REPRODUCTION IN PART OR AS A WHOLE WITHOUT THE WRITTEN PERMISSION OF LONE STAR HANDICAP VANS LLC IS PROHIBITED.



ADDITIONAL EQUIPMENT			
1	GRT STORAGE BAG	7	BACK-UP ALARM
2	VERTICAL HANDRAILS	8	AMBER LED LIGHTS
3	WARNING TRIANGLES	9	SLIDE-TH-CLICK
4	FIRST AID KIT	10	EMERGENCY WINDOW
5	AUX. HEATER	11	INTERLOCK SYSTEM
6	A/C UNIT		



NOTE:
THESE ARE APPROXIMATE
DIMENSIONS ONLY

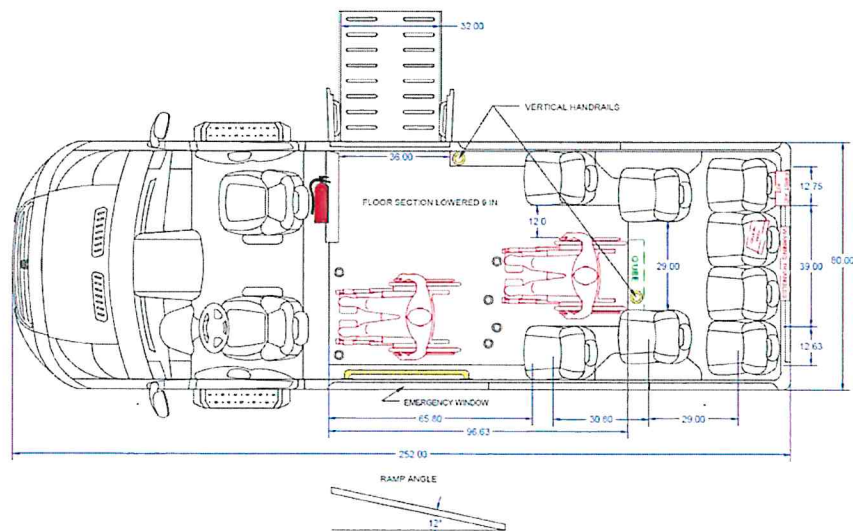
LONE STAR VAN				
TITLE				
PROMASTER 3500				
SIZE	FLOOR	DOOR	RAMP	DRAWN BY:
A	LONG	BUS	SWING AWAY	ZCO
SCALE	1:30	SHEET		1 of 1
			REV	1



BraunAbility ProMaster 3500



*Photos not to exact specifications





Class P Standard Build Options

1	Ram Pro Master 3500 Van Ext. Cargo Van 159" WB Lowered floor side entry conversion-bus door style
*	<i>Gerflor Flooring or equal approved</i>
*	<i>Panels for Walls: ABS Interior wall, ABS ceiling Insulation for walls</i>
*	<i>Set of Q'Straint with L Track - QRT 360</i>
*	<i>Air Conditioner: Rear AC and Rear Heat</i>
*	<i>New Exhaust System</i>
*	<i>2 - Passenger Freedman Seats, 3pt (on back-level 4 vinyl) curbside</i>
*	<i>2 - Passenger Freedman Seats, 3 pt (on back-level 4 vinyl) streetside</i>
*	<i>2 per van /1 Passenger rigid seats (level 4 vinyl) curbside</i>
*	<i>2 per van / 1 Passenger rigid seat (level 4 vinyl) streetside</i>
*	<i>Safety Kit (first aid kit, fire extinguisher, triangles)</i>
*	<i>Back up alarm-Interlock System</i>
*	<i>LED strip lighting</i>
*	<i>Emergency window</i>
*	<i>Kit stowage Assy-Q5-8525-SC</i>
*	<i>Driver & Passenger side step</i>
*	<i>Handrails-& Decals</i>
*	<i>36" A&M Systems Power Door</i>
*	<i>Fast Idle *required*</i>
*	<i>Amber LED light</i>
QTY	OPTION DESCRIPTION
1	QUBE retractable system for 2 nd position on back
1	LCD Monitor installed behind driver
1	QRT 360 - L Track w/ adjustable lap belt and shoulder belt
1	12" belt extender
1	Qstraint 20" belt extender
4	14" webbing loops
1	Belt web cutter
1	Dash Warning Light
1	TA45LPSC2SLP Super 10
*	3" Transit Stripe - CBS
*	Storage container as listed in 7.2 h) - CBS
*	10 unit first aid kit
*	Blood pathogen kit
*	2.5 4 BC fire extinguisher
*	Reflective triangles

SUMMARY OF STANDARD WARRANTIES

(Provide complete warranty information and parchment with proposal)

Warranty	Miles	Years
Body Structure	36,000	3 years
Chassis	36,000	3 years
Engine	60,000	5 years
Transmission	60,000	5 years
Air conditioner	Unlimited	3 years
Lift/Ramp	Unlimited	5 years
EV Battery	N/A	N/A
EV Conversion/Installation	N/A	N/A
CNG Warranty (Install and tanks)	N/A	N/A



CITY of CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services

DATE: December 5, 2022

SUBJECT: General Services – Approval – Waive the City's Formal Purchasing Requirements and Authorize the Purchase of Remix by Via Route Planning Software for \$88,000 for Five Years of Service; and Approval – Res. 22-____, Amending the 2022-2023 Transit Budget by \$18,500 in Previously Received State Transit Assistance funds for the First Year of Service.

ATTACHMENTS: 1. Resolution 22-____, and Budget Amendment
2. Remix Software Quote
3. Remix Terms and Conditions

CONFLICT OF INTEREST

None.

RECOMMENDATION

For the City Council to authorize the City Manager to approve the purchase of Remix by Via Route Planning Software for three years of service with an option for two one-year extensions; and for the City Council to approve a resolution amending the 2022-2023 Transit budget to add \$18,500 previously received State Transit Assistance Funds for the first year of service.

EXECUTIVE SUMMARY

Staff recommends the purchase of Remix by Via to be utilized for fixed-route bus service route planning. The purchase will support Clovis Transit's goal to provide efficient and convenient transportation to passengers using Stageline bus services. The total cost of the software over five (5) years is \$88,000. The costs for the software and associated expenses will be paid through funds already received.

BACKGROUND

Software Purchase

In preparation for the opening of the new Transit Center at Landmark Square, Transit staff is currently working on a comprehensive route redesign project for Stageline bus services. Staff established three objectives for this project: 1) improve fixed-route passenger service, 2) improve operational efficiency, and 3) bring down operation costs. Staff met with several different

vendors to determine if there was a route design software that would meet the objectives. Out of the five vendors, Remix by Via offered an innovative solution that met all three objectives and was the only solution that automatically integrated US Census Data and CalEnviroScreen map data directly into the design process. This data, which includes all Census, demographic, and SB535 disadvantaged communities required information, is critical to planning public transit routes that are equitable. Remix by Via also provides detailed costing information that can be viewed by route, bus, passenger, or hour. The ease with which the data is available within the route planning software is highly desirable.

An additional advantage of Remix by Via is that it is used by City of Fresno's Transportation Department for route planning of Fresno Area Express bus lines. By utilizing the same software, Clovis and Fresno will be able to coordinate service, make necessary changes, and provide seamless service between the two systems easily and efficiently. Transit passengers frequently travel on both Fresno and Clovis public transit systems and any improvement in coordination will be beneficial.

Remix by Via software program has many features, including:

- Ability to design and implement routes, and easily evaluate efficiencies to determine where improvements can be made.
- User-friendly and intuitive interface for staff that provides all the necessary data to create smart bus routes that may create cost savings.
- Blocking, run-cutting, and rostering options are included.
- Includes ability to coordinate multimodal travel options.
- The software can be used to design microtransit zones if desired in the future.

Remix by Via is currently used by hundreds transit agencies throughout the United States with a high degree of satisfaction. Agencies experienced swift resolution to customer service inquiries, increases in ridership and passenger satisfaction, and a decline in operational costs.

FY2022-2023 Transit Budget Amendment

A budget amendment is required for the FY2022-2023 budget to account for expenditure of \$18,500 in previously received State Transit Assistance as follows:

- Transit Fund 515: Increase expenditure budget for software purchase by \$18,500 for the first year of dispatching software service.

FISCAL IMPACT

Adequate State Transit Assistance (STA) funds are held in the City's Transit fund account for the purchase of the software. Those funds will be added to the current budget with the budget amendment shown in Attachment 1.

Pricing for the recommended purchase is as follows:

Annual Fees (based on a total fixed route fleet size of 14 vehicles):

Year of Contract	Cost
Year One	\$13,500 + \$5,000 Installation Fee
Year Two	\$15,000
Year Three	\$16,500
Year Four (Optional ext.)	\$18,000
Year Five (Optional ext.)	\$20,000

Five Year Total: \$88,000

REASON FOR RECOMMENDATION

Remix by Via is a route design solution with the capability of providing design and planning that is intuitive and easily modified. The software will allow staff to design routes that passenger-friendly, more efficient, and improve public transit services to passengers. Remix by Via is used by City of Fresno's Fresno Area Express transit planners, which will provide opportunities not currently available for coordination between the two services.

Clovis Transit is requesting a waiver from formal bid procedures due to the lack of viable vendors for this specified purchase as specified within the City of Clovis Purchasing Manual and Procedures, Section IV C,1, b, (2).

ACTIONS FOLLOWING APPROVAL

Amendment of the Transit FY2022-2023 budget to reflect the budgetary changes to expenditure accounts. A contract will be prepared for the City Manager's approval and the software will be ordered.

Prepared by: Amy Hance, General Services Manager

Reviewed by: City Manager *AH*

RESOLUTION 22-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING AMENDMENTS TO THE FY 2022-2023 GENERAL SERVICES DEPARTMENT

WHEREAS, the City Council adopted the FY2022-23 Budget on June 13, 2022; and

WHEREAS, the City of Clovis has previously received State Transit Assistance (STA) funds for transit capital purchases; and

WHEREAS, prior allocations of STA funds were not expended and remain in the Transit Fund awaiting allocation; and

WHEREAS, the City Council has approved the expenditure of STA for the purchase of Remix by Via route planning software; and

WHEREAS, the STA funds were not originally included in the FY 2022-23 General Services budget.

NOW, THEREFORE BE IT RESOLVED, that the City Council of The City of Clovis hereby approves the budget amendment shown in the “Summary of Expenditures/Revenues by Department” “Summary of Expenditures/Revenues by Fund”, attached 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 December 5, 2022, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: December 5, 2022

Mayor

City Clerk

Attachment A

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

Transit	<u>\$18,000</u>
TOTAL DEPARTMENT	\$18,000

SUMMARY OF EXPENDITURES BY FUND

Transit	<u>\$18,000</u>
TOTAL FUND	\$18,000

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

Transit	<u>\$18,000</u>
TOTAL DEPARTMENT	\$18,000

SUMMARY OF REVENUE BY FUND

Transit	<u>\$18,000</u>
TOTAL FUND	\$18,000

NET GENERAL FUND SUPPORT

TOTAL	\$0
-------	-----

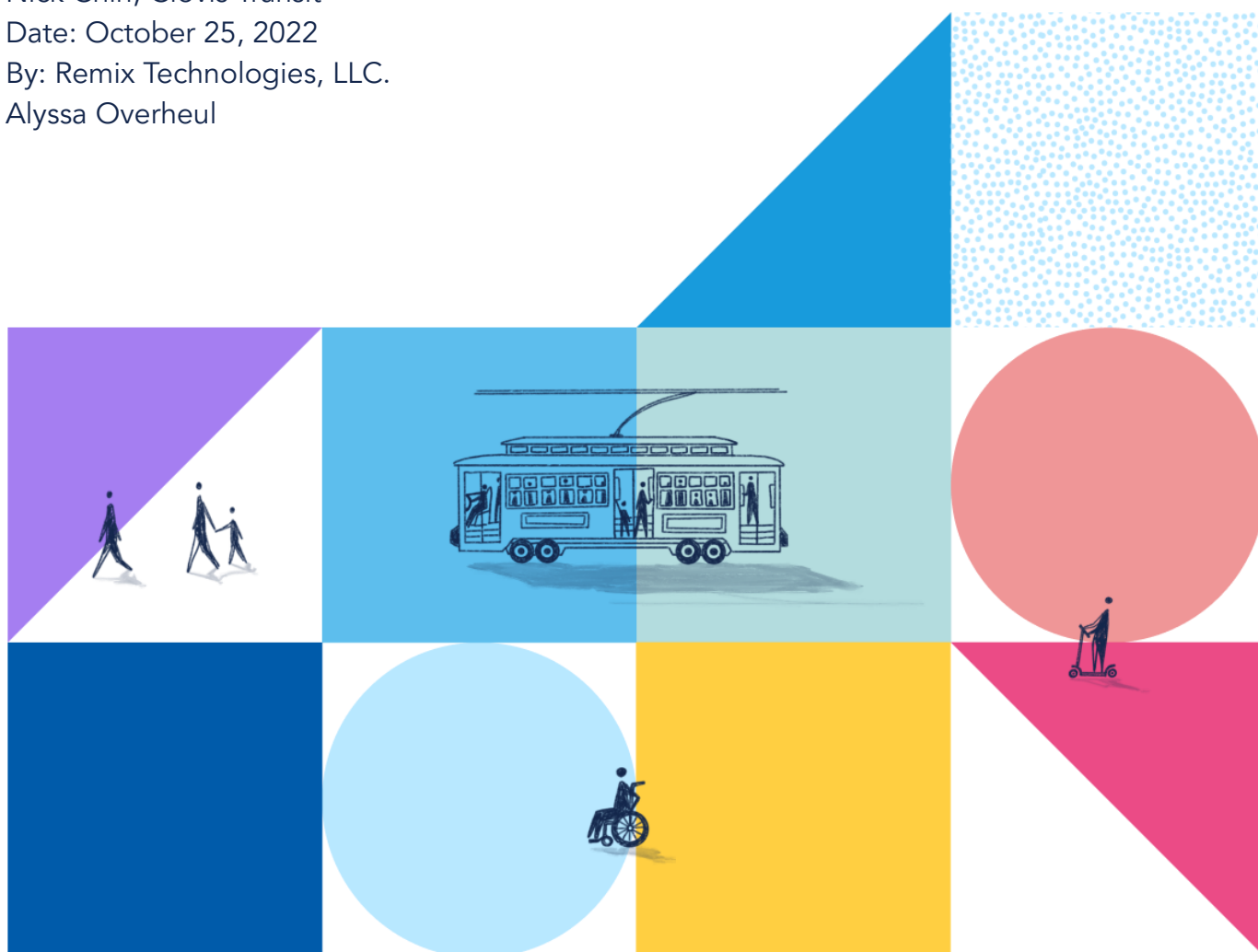
Remix Proposal for Clovis Transit

Nick Chin, Clovis Transit

Date: October 25, 2022

By: Remix Technologies, LLC.

Alyssa Overheul



About Remix

Our vision is to empower cities to manage all aspects of transportation and create equitable, safe, and accessible outcomes.

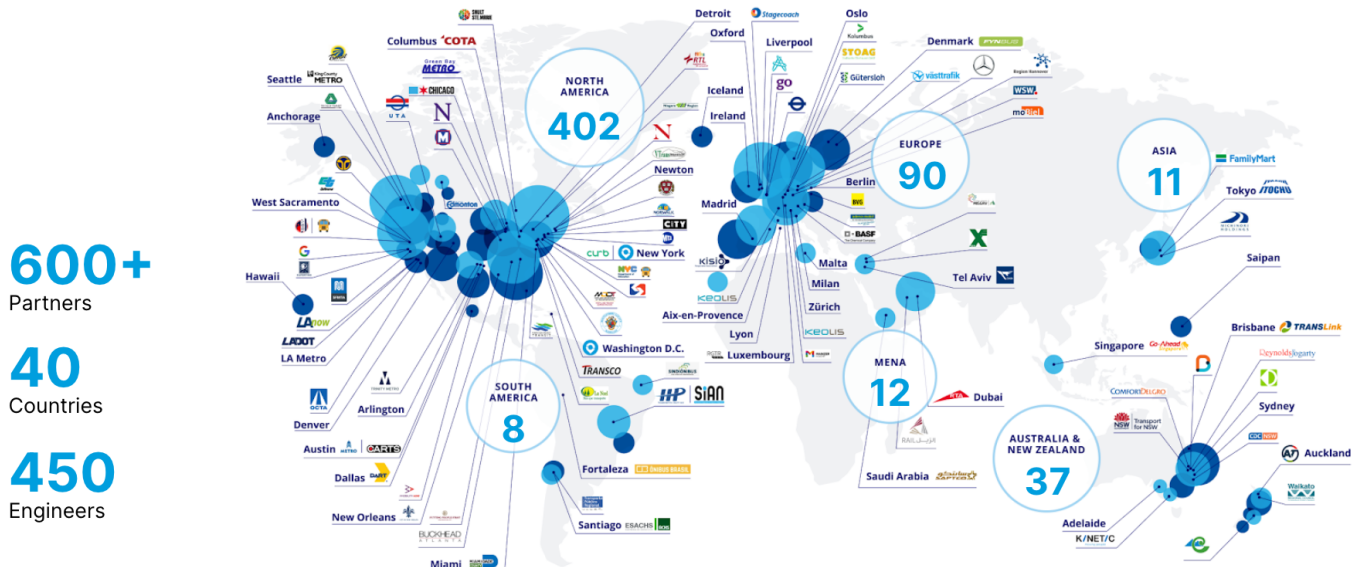
Remix is the only company that brings together the complete transportation picture in a single software platform. We build products that help cities develop the best transportation outcomes for their communities. The company was founded in 2014 out of Code for America, and has partnered exclusively with government agencies since its founding.

Our technology enables you to see your data in one place, plan a holistic network, and build consensus across stakeholders. Remix focuses on technology and expertise that enables transportation professionals to do their best work through easy-to-use, visual tools to analyze and design more livable cities, where multiple modes of transportation can thrive.

Over 375 governments around the world leverage Remix's transportation platform. We bring the unique expertise of working directly with over 11,000 transportation professionals to build a cloud-based software platform that helps local governments build more livable communities. In 2021, we joined the Via Transportation, Inc. family and now have a global community of over 600 customers around the world.

Our global footprint informs our impact

600+ cities and agencies choose Via for delivering public mobility.



Product Overview

The core data platform enables three distinct workflows for transportation professionals and decision-makers, powered by open data and open source tools. By pulling data insights into the planning process, local governments can design better transportation networks, safer, more multimodal streets, and seamless integration between public and private transportation.



EXPLORE

Access and visualize all of your transportation data first

Gather context and explore problems through quick insights for custom-drawn and existing geographical boundaries



TRANSIT PLANNING + SCHEDULING

Plan transit from vision through implementation

Design, evaluate, and collaborate all in one place - from a small detour to a full system redesign, and everything in between. Once your plan is set, take your vision through to blocking, runcutting, and rostering.



STREET DESIGN

Design streets for the multimodal city

Explore new street design concepts, use data to inform decisions, and move your ideas forward, faster.



ON-DEMAND PLANNING

Plan an integrated network across modes

Coordinate a multimodal transportation network that fit the diversity of your community, while understanding the impacts to operational constraints.

Remix Transit Proposal for Clovis Transit

Prepared for Nick Chin, Clovis Transit. By Alyssa Overheul, alyssa.overheul@ridewithvia.com). Date: October 25, 2022

What do I get with a Remix License?

A full transit planning platform for your entire agency. It's an annual subscription for unlimited users, and includes:

- Fast and accurate sketch planning using existing stop infrastructure
- Instant demographic impact analysis
- Instant cost estimates
- Customizable vehicle blocking for accurate cost estimates
- Unlimited exports (excel, shapefile, KML, frequency-based GTFS, high-resolution image)
- Unlimited custom data layers (polygon-based shapefiles)
- Unlimited GTFS uploads
- Public engagement and share features
- Travel-time isochrone visualizations
- Title VI Engine (US) - generate a service equity analysis in less than 10 minutes
- Timetables – generate and customize timepoints and segment-level runtimes
- Export timetables into excel
- Consistent and regular product improvements / feature launches

Customer support?

Our Success Team brings years of transit experience and works with you to develop a customized Success Plan. Each plan has three parts:

1. Onboard (First 60 Days): Identify a first project and work on it together.
 - Workshops, Project-Assisted Training, Individual Sessions, Video Guides
2. Plan (Months 2+): Bring your plans to life with Remix.
 - Regular Check-ins, Best Practices Blog, Remix Webinars, Remix Conference
3. Measure Results (Months 6+): Document your return on investment (ROI).
 - Develop ROI Report, Set Yearly Goals, Manage Renewal, Plan Ahead

Technical requirements?

Remix is entirely web-based and software-as-a-service (SaaS).

- Everything is in the cloud -- no installations or downloads. Can access from anywhere.
- Every user gets a login + password
- Remix works on the latest version of Google Chrome, Microsoft Edge, and Firefox
- Agency-wide annual subscription -- no maintenance fees.

Remix Explore for Clovis Transit

What do I get with Remix Explore?

A full data management platform for your entire staff. It's amplifies your Remix license with:

- US Census data in key demographic areas, including: Population Density, Population Growth, Jobs, Public Transit to Work, Minority, Poverty, Car-Free Households, Seniors, Youth, Disability, Limited English, and more datasets.
- Geographic data including Political Boundaries: Cities, Counties, Zip Codes, and Census-designated places
- Custom polygon-based shapefiles provided by your agency
- Data self-uploads
- Custom datasets provided by your agency, including:
 - Shared mobility infrastructure data, including docked Bikeshare
 - Movement data, including traffic speeds data
 - Line and point-based shapefiles, including bike infrastructure network

Remix Service Order

This Service Order (the "Order") is entered into between Remix Technologies, LLC, a Delaware limited liability corporation ("Company"), and Clovis Transit ("Customer") and will become effective as of the Effective Date (defined below in the Order).

Scope of Services & Terms

Effective Date	December 1, 2022
Commitment Term	5 Years 12/1/2022 - 11/30/2027
Remix Transit Planning Platform License	Total Contract Value: \$88,000 USD / 5 Years - Annual Fees + \$5,000 USD Installation Fee Year One: \$13,500 USD based on a total fixed route fleet of ~14 vehicles Year Two: \$15,000 USD based on a total fixed route fleet of ~14 vehicles Year Three: \$16,500 USD based on a total fixed route fleet of ~14 vehicles Year Four: \$18,000 USD based on a total fixed route fleet of ~14 vehicles Year Five: \$20,000 USD based on a total fixed route fleet of ~14 vehicles Includes: - Remix licenses for an unlimited number of users within the Customer's organization. - Software as a Service (SaaS): fully hosted, cloud-based web platform. - Platform functionality as described on page 1 with continuous improvements released throughout the course of the contract - Dedicated Customer Success staff - Premium Enterprise Support: response to requests in 1 business day
Marketing Terms	Willingness to work with Remix to develop a case study, mutually agreeable press release, ability to use Customer as a reference.
Additional Services	Customer acknowledges that additional services, such as access to Company's (including its affiliates) proprietary technology platform used to establish, monitor, operate and/or manage fixed-route and demand responsive transit networks, may be added to this Agreement at an additional cost during the Term.
Payment Terms	Fees invoiced annually in advance of access, payable in 30 days from the date of invoice.

Signatures on following page

This Order incorporates the Terms and Conditions ("Terms") found at URL: <https://www.remix.com/service-terms>. In the event of a conflict or inconsistency between the Terms and this Order, the Terms will control, except to the extent that this Order expressly states that it supersedes specific language in the Terms. Capitalized terms not otherwise defined here will have the meaning ascribed to them in the Terms. By signing below, the parties agree to the Order and the Terms.

Clovis Transit

Signature: _____

Name: _____

Title: _____

Date: _____

Remix Technologies, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

Billing Contact Name: _____ Email: _____ Phone: _____

[Solutions](#)[Customers](#)[Resources](#)[Company](#)[EN](#)[Log in](#)[Schedule
a demo](#)

Terms and Conditions

Effective as of April 1, 2022

Please note that if you are located in the UK, EU, Norway, Iceland, Serbia or Switzerland then the following EU Terms and Conditions shall apply: [EU Terms and Conditions](#).

These Terms and Conditions ("**Terms**") together with an Order incorporating these Terms (the "**Agreement**"), are entered into between Remix Technologies, LLC, a Delaware limited liability corporation ("**Remix**"), and the customer identified on the Order Form ("**Customer**"), and are effective as of the date the Effective Date in the Order (the "**Effective Date**").

1. Definitions

ATTACHMENT 3

Capitalized terms will have the meanings set forth in this Section 1, or in the section in which they are first used.

1.1 "Authorized User" means each of Customer's employees, agents, personnel, contractors who are authorized to access the Remix Solution under this Agreement.

1.2 "Customer Content" means any content, data and information provided to Remix by or on behalf of Customer or its Authorized Users for use with the Services, including, without limitation, any Mobility Provider Data. Customer Content does not include Licensed Material, Resultant Data or Documentation.

1.3 "Documentation" means the materials describing the use and operation of the Remix Solution that are made available to Customer as written technical briefs or on <https://help.remix.com/> or such other web page as Remix may designate to Customer from time to time.

1.4 "Intellectual Property Rights" means any and all now known or hereafter existing intellectual property rights, including: (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade

secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.5 “Licensed Material” means any reports or results generated by Customer as part of the Services. Licensed Material does not include the Remix Solution or any component thereof.

1.6 “Mobility Provider” means an operator of a transportation or rideshare service or platform that provides or facilitates transportation by train, bus, car, bicycle, scooter or any other mode of transportation and is required to provide transportation related data and information to Customer (or its third party designees) by contract, permit or other applicable ordinance, regulation or law.

1.7 “Mobility Provider Data” means any data or other information made available to Remix by a Mobility Provider at the direction, or for the specific benefit, of the Customer, even if Remix’s receipt of such information is governed by its own agreement with the Mobility Provider.

1.8 "Order" means the service order signed by both parties that incorporates these Terms.

1.9 "Remix Solution" means the Remix software-as-a-service application identified in any Order that allows Authorized Users to access certain features and functions through a web interface.

1.10 "Resultant Data" means statistics, data, insights, observations, analyses, ideas and other information that does not identify any natural person and is derived from the categorization, modeling or other processing of one (or more) data set(s), including, without limitation, data sets that include Customer Content and data of Remix's other customers.

1.11 "Services" means any services provided by Remix to Customer under this Agreement as described in an Order Form, including, but not limited to, provision of the Remix Solution and Professional Services.

2. Provision of Services

2.1 Access. Subject to Customer's advance payment of the fees set forth in the Order ("**Fees**"), Remix will grant Customer Use Rights (as defined below) for the Remix Solution for the duration of the Term (as defined below).

Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Remix Solution, and notify Remix promptly of any such unauthorized use known to Customer.

2.2 Support Services. Subject to the terms and conditions of this Agreement, Remix will exercise commercially reasonable efforts to (a) provide support for the use of the Remix Solution to Customer, (b) keep the Remix Solution operational and available to Customer, in each case in accordance with its standard policies and procedures, and (c) provide the Service in accordance with the Service Level Terms set out in Exhibit A.

2.3 Hosting. Remix will, at its own expense, provide for the hosting of the Remix Solution, provided that nothing herein will be construed to require Remix to provide, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Customer or any Authorized User to access the Remix Solution from the Internet.

3. Intellectual Property

3.1 Use Rights. Subject to the terms and conditions of this Agreement, Remix grants the Customer non-exclusive, non-transferable (except as permitted under Section 13.6), subscription access and use rights to the Remix Solution during the Term (as defined below), solely for Customer's internal business purposes and in accordance with the limitations (if any) set forth in the Order, (a) to access and use the Remix Solution and in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer's use of the Remix Solution ("Use Rights"). Customer may permit any Authorized Users to access and use the features and functions of the Remix Solution as contemplated by this Agreement, provided Customer remains fully responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and ensuring any use of the Services by such individuals is for the sole benefit of Customer.

3.2 Restrictions. Customer will not, and will not permit any Authorized User or other party to: (a) allow any third party to access the Remix Solution, Licensed Material or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Remix Solution, Licensed Material or Documentation; (c) sublicense, lease, sell, resell, rent, loan,

distribute, transfer or otherwise allow the use of the Remix Solution or Documentation for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code or the underlying ideas, algorithms, know-how, structure or organization or nonpublic APIs of the Remix Solution, except as permitted by law; (e) interfere in any manner with the operation of the Remix Solution or the hardware and network used to operate the Remix Solution; (f) modify, copy or make derivative works based on any part of the Remix Solution or Documentation; (g) access or use the Remix Solution to build a similar or competitive product or service; (h) attempt to access the Remix Solution through any unapproved interface; or (i) otherwise use the Remix Solution, Licensed Material, or Documentation in any manner that exceeds the scope of use permitted under Section 3.1 or 3.3 or in a manner inconsistent with applicable law, the Documentation, or this Agreement.

Customer acknowledges and agrees that the Remix Solution will not be used, and is not licensed for use, in connection with any of Customer's time-critical or mission-critical functions. Customer will not remove, alter, or obscure any proprietary notices (including copyright and trademark notices) of Remix or its

licensors on the Licensed Material or any copies thereof.

3.3 Ownership. As between the parties, the Customer Content, and all worldwide Intellectual Property Rights in it, is the exclusive property of Customer. All rights in and to the Customer Content not expressly granted to Remix in this Agreement are reserved by Customer. As between the parties, the Remix Solution, Licensed Materials, Documentation and Resultant Data, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Remix and its suppliers. All rights in and to the Remix Solution, Licensed Materials, Documentation and Resultant Data not expressly granted to Customer in this Agreement are reserved by Remix and its suppliers.

3.4 License to Licensed Material. Subject to the terms and conditions of this Agreement, Remix grants Customer a non-exclusive, non-transferable (except as permitted under Section 13.6), non-sublicensable, royalty-free and fully-paid license during the Term to use Licensed Material solely for Customer's internal business purposes and, where Customer is a governmental body, to publicly display the Licensed Material as reasonably necessary to exercise its official authority or fulfill its legal

obligations, including, without limitation, to solicit public comment on information contained in Licensed Material.

3.5 License to Customer Content; Resultant

Data. Customer grants Remix a non-exclusive, worldwide, non-transferable (except as permitted under Section 13.6), non-sublicensable (except to permitted subcontractors under Section 13.10), royalty-free and fully paid license to (a) use the Customer trademarks, service marks, and logos as required to provide the Services; (b) to use, host, store, create derivative works from, communicate, distribute and publicly display the Customer Content as required to perform the Services and improve the Remix Solution; and (c) analyze the Customer Content, combine Customer Content with other data and create Resultant Data, including, without limitation, utilizing machine learning applications and other analytical methods. Customer acknowledges that the value of the Remix Solution to Customer and Remix's ability to provide it in accordance with this Agreement are contingent on Remix's ability to operate and improve the Remix Solution based on what it learns from the Resultant Data generated in the course of delivering the Remix Solution to all Remix customers.

3.6 Open Source. Certain items of software may be provided to Customer with the Remix Solution and certain Licensed Materials are subject to "open source" or "free software" licenses ("**Open Source Material**"). Some of the Open Source Material is owned by third parties. Open Source Materials are not subject to the terms and conditions of Sections 3.1 or 10. Instead, each item of Open Source Materials is licensed under the terms of the end-user license that accompanies such Open Source Materials. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Materials. If required by any license for particular Open Source Materials, Remix makes such Open Source Materials, and Remix's modifications to that Open Source Materials, available by written request at the notice address specified below.

3.7 Third Party Products. Certain features and functionality of the Services may rely on third party data, software, or applications ("**Third Party Products**"). Such Third-Party Products may be subject to their own terms and conditions, which will be identified to the Customer in writing before they are incorporated into the Services. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or

use such Third-Party Products or utilize any features or functionality of the Services that incorporate them.

3.8 Feedback. Customer hereby grants to Remix a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use and / or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the Services. Remix will not identify Customer as the source of any such feedback.

4. Fees and Expenses; Payments

4.1 Fees. In consideration for the Use Rights granted to Customer and the Services performed by Remix under this Agreement, Customer will pay to Remix the Fees. Fees shall be paid in full in advance of access, except as otherwise provided in the Order Form in which case all Fees shall be billed at the end of the month due and payable within thirty (30) days of the date of the invoice. Customer will reimburse Remix for documented expenses that are expressly provided for in an Order Form or SOW (defined below) or that have been approved in

advance in writing by Customer. Remix reserves the right (in addition to any other rights or remedies Remix may have) to discontinue the Remix Solution and suspend all Authorized Users' and Customer's Use Rights to the Services including if any Fees are more than thirty (30) days overdue until such amounts are paid in full. If Customer believes that Company has billed Customer incorrectly, Customer must contact Remix no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's accounts receivables department. Except where price is fixed under the Order Form for the Term, Remix may renegotiate with the customer's and agree an annual price increase if (i) additional features are added or improvements to features to the extent costs of providing the Services have increased, or (ii) in response to market changes such as labour costs, currency fluctuations, changes in taxes/regulations, inflation, license fees, infrastructure and administrative costs.

4.2 Taxes. The Fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other

than taxes based on Remix's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of the Services, or the license of the Remix Solution to Customer. Customer will make all payments of Fees to Remix free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to Remix will be Customer's sole responsibility, and Customer will provide Remix with official receipts issued by the appropriate taxing authority, or such other evidence as the Remix may reasonably request, to establish that such taxes have been paid.

4.3 Interest. Any amounts not paid when due will bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, from the due date until paid.

5. Customer Content and Responsibilities

5.1 Licenses; Customer Content. Customer will obtain all third party licenses, consents and permissions needed for Remix to use the Customer Content to provide the Services and exercise its rights under this Agreement. Customer is solely responsible for the accuracy,

quality, integrity, legality, and reliability of all Customer Content.

5.2 Customer Warranty. Customer represents and warrants that the Customer Content and its use by Remix in accordance with this Agreement will not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage Remix's system or data; and (e) otherwise violate the rights of a third party or applicable law.

5.3 Back-ups; Security. Customer will have the ability to export Customer Content out of the Remix Solution for the Term of the relevant Order Form and thereafter in accordance with Section 11.4. Customer acknowledges that the Remix Solution is not intended to serve as its data retention repository and that Customer is solely responsible for creating its own backup copies of any Customer Content at Customer's sole cost and expense. Customer and its Authorized Users will have access to the Customer Content and will be responsible for all changes to and/or deletions of Customer Content by Customer and the security of all usernames, passwords, API keys and other credentials required to access the Remix

Solution. Customer will be responsible for any and all actions taken using Customer's accounts and passwords. If any Authorized User who has access to the Remix Solution is no longer an employee of or engaged by Customer, then Customer will immediately delete such access and otherwise terminate such Authorized User's access to the Remix Solution.

5.4 Mobility Provider Cooperation. Customer acknowledges that the performance of the Services (and value of the Services to Customer) may depend on Remix's receipt of data or other information or cooperation from one or more Mobility Providers. Therefore, Customer shall be responsible for taking all actions reasonably required to ensure such Mobility Providers provide such data, information or cooperation to Remix as is reasonably required for Remix to perform the Services, including, without limitation, requiring Mobility Providers to make available to Remix any and all data and information to which Customer is entitled in accordance with Remix's then applicable data specifications, and without requiring Remix to pay any additional consideration to, or sign any agreement with, the Mobility Provider that would interfere with the provision of services or grant of licenses under this agreement. Customer acknowledges and agrees that (a) Remix shall have no liability for a Mobility Provider's failure

to provide such data, information or cooperation or other action or omission and (b) a Mobility Provider shall in no event be construed as a Remix supplier, contractor or agent even if Remix enters into a license or other agreement with such Mobility Provider to obtain data or information in furtherance of the Services.

6. Freedom of Information Requests

6.1 Freedom of Information Requests. Remix will cooperate with Customer's requests to provide information that Customer requires to comply with its legal obligations under applicable freedom of information laws, provided that to the extent such cooperation exceeds the scope of Services specified in an Order Form.

7. Warranties and Disclaimers

7.1 Limited Warranty. Remix represents and warrants that it will provide the Services and perform its other obligations under this Agreement in a professional and workmanlike manner and in substantial conformity with the Documentation. Remix's sole liability (and

Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Remix to use commercially reasonable efforts to correct the reported non-conformity, or if Remix determines such remedy to be impracticable, either party may terminate the portion of the Services affected by the breach of warranty and Customer will receive as its sole remedy a refund of any Fees Customer has pre-paid for use of such Services for the terminated portion of the applicable Term. The limited warranty set forth in this Section 7.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by use not in accordance with the Documentation, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided on a no-charge, trial or evaluation basis.

7.2 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 7.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, LICENSED MATERIAL AND DOCUMENTATION ARE PROVIDED "AS IS," AND NEITHER REMIX NOR ITS SUPPLIERS MAKES (AND SUCH PARTIES HEREBY DISCLAIM) ANY OTHER WARRANTIES,

REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NO INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. REMIX DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE REMIX SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE. REMIX SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, THIRD-PARTY PLATFORMS, OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF REMIX OR THE ACCURACY, QUALITY, INTEGRITY, LEGALITY OR RELIABILITY OF MOBILITY PROVIDER DATA.

8. Limitation of Liability

8.1 Types of Damages. EXCEPT WITH RESPECT TO A PARTY'S LIABILITY UNDER SECTION 10, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY: INCIDENTAL,

INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION: LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. NOTHING IN THIS AGREEMENT SHALL LIMIT THE CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

8.2 Amount of Damages. THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO REMIX DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL REMIX'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S

LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF A PARTY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY.

8.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this Section 8 will survive and continue in full force and effect regardless of any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

8.4. Nature of Claims and Failure of Essential Purpose. The parties agree that the waivers and limitations specified in this Section 8 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. Confidentiality

9.1 Confidential Information. "Confidential Information" means any code, inventions,

analysis methods and products, know-how, business, technical and financial information, and any other nonpublic information of a party (the "**Disclosing Party**"), whether disclosed orally or in written or digital media, that it discloses to the other party (the "**Receiving Party**") and identifies as "confidential" or with a similar legend at the time of such disclosure or that the Receiving Party knows or should have known is the confidential or proprietary information of the Disclosing Party. The Services, Documentation and all enhancements and improvements thereto will be considered Confidential Information of Remix.

9.2 Protection of Confidential Information.

Except as expressly authorized herein, the Receiving Party will (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations, and exercising its rights, under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Customer) who have a need to know such information for the purpose of the performance of the Receiving Party's obligations or exercising its rights under this Agreement, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the

confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will, upon request, certify to the Disclosing Party its compliance with this sentence.

9.3 Exceptions. The confidentiality obligations set forth in Section 9.2 will not apply to any information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure free of any confidentiality duties or obligations; or (d) the Receiving Party can demonstrate, by clear and convincing evidence, was independently developed by employees and contractors of the

Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information (i) to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law (including, without limitation, freedom of information laws) or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure to the extent permitted by law, cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order, discloses no more information that is legally required, and in the case of disclosure required by freedom of information laws, Customer agrees to afford all confidentiality protections available under applicable law to such Confidential Information of Remix prior to disclosing it pursuant to such laws, including, without limitation, by providing Remix notice of freedom of information requests for such Confidential Information, the opportunity to object to Customer's disclosure thereof, and notice of Customer's disclosure determinations; and (ii) to its attorneys, accountants, professional advisors, and actual or potential lenders, investors or acquirers so long as such parties are bound by confidentiality

obligations no less restrictive than those set forth herein.

10. Indemnification

10.1 By Remix. Remix will defend at its expense any claim brought against Customer insofar as such claim is based on a claim by any third party alleging that the Remix Solution infringes such third party's patent, copyright or trademark rights under applicable laws of any jurisdiction within the United States of America, and will indemnify and hold harmless Customer from and against any damages, expenses and costs finally awarded against Customer or agreed in settlement by Remix (including reasonable attorneys' fees and costs) resulting from such claim. If any portion of the Remix Solution becomes, or in Remix's opinion is likely to become, the subject of a claim of infringement, Remix may, at Remix's option: (a) procure for Customer the right to continue using the Remix Solution; (b) replace the Remix Solution with non-infringing software or services which do not materially impair the functionality of the Remix Solution; (c) modify the Remix Solution so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused prepaid Fees for the remainder of the term then in effect, and

upon such termination, Customer will immediately cease all use of the Remix Solution and Documentation. Notwithstanding the foregoing, Remix will have no obligation under this Section 10.1 or otherwise with respect to any infringement claim based upon (i) any use of the Remix Solution not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the Remix Solution in combination with other products, equipment, software or data not supplied by Remix; (iii) any modification of the Remix Solution by any person other than Remix or its authorized agents; or (iv) Customer's settlement or admission with respect to any claim without Remix's prior written consent (each an "**Exclusion**"). This Section 10.1 states the sole and exclusive remedy of Customer and the entire liability of Remix, or any of its officers, directors, employees, shareholders, contractors, suppliers or representatives, for infringement claims and actions.

10.2 By Customer. Customer will defend at its expense any claim brought against Remix insofar as such claim is based on a claim by any third party arising from or relating to the Customer Content, the breach or alleged breach by Customer of Section 5.2 (Customer Warranties), or any Exclusion, and Customer will indemnify and hold harmless Customer from

and against any damages, expenses and costs finally awarded against Customer or agreed in settlement by Customer (including reasonable attorneys' fees and costs) resulting from such claim.

10.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

11. Term and Termination

11.1 Term. Unless otherwise stated in the applicable Order Form, the term of this Agreement will begin on the Effective Date set out in the Order Form and continue in full force and effect for the time period specified therein, unless earlier terminated in accordance with this Agreement (the "Term"). Thereafter, the Parties may renew the Agreement in writing by mutual consent. If the Agreement is not renewed by mutual consent in writing, this Agreement shall

either: 1) terminate at the end of the Term in accordance with this clause 11, or 2) the parties may agree in writing a short term renewal for up to 3 additional months until a longer term renewal is executed by the parties.

11.2 Termination for Breach. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

11.3 Effect of Termination. Upon termination of this Agreement for any reason: (a) all licenses granted hereunder will immediately terminate; (b) promptly after the effective date of termination, each party will comply with the obligations to delete or return all Confidential Information of the other party, as set forth in the Section 9; provided that, for clarity, Remix is not obligated to delete or return Resultant Data; and (c) any amounts owed to Remix under this Agreement will become immediately due and payable. Sections 1, 3.3-3.8, 4, 5.3, 5.4, 7.2, 8, 9, 10, 11.3, 11.4, 12 and 13 will survive termination of this Agreement for any reason.

11.4 Data Extraction. For sixty (60) days after the end of the Term, as applicable, Remix will make Customer Content and Licensed Materials

available to Customer through the Remix Solution on a limited basis solely for purposes of Customer retrieving such Customer Content and Licensed Materials, except to the extent Remix has instructed Customer to delete it. After such period, Remix may destroy all copies of Customer Content and Licensed Materials in its possession.

12. Co-Marketing

At the request of Remix, Customer agrees to the issuance of a joint press release on a mutually agreed upon date or the 90th day from the Effective Date, whichever is earlier. Each party will have the right to approve the press release in advance, but such approval will not be unreasonably delayed or withheld. Customer also agrees to use of Customer's name and logo on Remix's web site and in Remix promotional materials. Customer agrees that Remix may disclose Customer as a customer of Remix.

13. Miscellaneous

13.1 Governing Law and Venue. This Agreement and any action arising out of or related to it will be governed and interpreted by

and under the laws of the State of California. Customer hereby expressly consents to the exclusive jurisdiction and venue in the state and federal courts of San Francisco County, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Customer acknowledges and agrees that the language to be used in any proceedings or claim shall be English.

13.2 Export. Customer agrees not to export, report, or transfer, directly or indirectly, any U.S. technical data acquired from Remix, or any products utilizing such data, in violation of the United States export laws or regulations.

13.3 Government End-Users. Elements of the Services are commercial computer software. If the user or licensee of the Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. All Services were

developed fully at private expense. All other use is prohibited.

13.4 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

13.5 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13.6 No Assignment. Except as provided in Section 13.10, neither party will assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted such assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement will be

binding upon the parties and their respective successors and permitted assigns.

13.7 Compliance with Law. Customer will always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services, Licensed Material and Documentation.

13.8 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of Fees owed) or failure to perform such duties or obligations will not be considered a breach of this Agreement if such delay or failure is caused by a labor dispute, shortage of materials, fire, earthquake, flood, denial of service or other cyber-attack, diminishment of telecommunications or data networks or services, refusal of a license by a government agency or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

13.9 Independent Contractors. Customer's relationship to Remix is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have and

will not represent to any third party that it has, any authority to act on behalf of Remix.

13.10 Subcontractors. Remix may use the services of subcontractors and permit them to exercise the rights granted to Remix in order to provide the Services under this Agreement, provided that Remix remains responsible for (a) compliance of any such subcontractor with the terms of this Agreement and (b) for the overall performance of the Services as required under this Agreement.

13.11 Notices. All notices required or permitted under this Agreement must be delivered in writing, if to Remix, by emailing legal@ridewithvia.com and if to Customer by emailing the Customer Point of Contact email address listed on the Cover Page, provided, however, that with respect to any notices relating to breaches of this Agreement or termination, a copy of such notice will also be sent in writing to the other party at the address listed on the Cover Page by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Each party may change its email address and/or address for receipt of notice by giving notice of such change to the other party.

13.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

13.13 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters and supersedes all prior agreements, understandings and arrangements between the parties whether oral or written of any nature whatsoever with respect to such subject matters. The parties acknowledge that pursuant to current practices, standard quotation forms, purchase orders and other forms (including terms and conditions contained in catalogues) may be utilised by Customer, which forms contain terms and conditions intended to be applicable to a purchase and sale between a buyer and a vendor. The parties agree that, except as expressly provided in the Agreement, no such terms and conditions as appear on such standard forms or catalogues shall be incorporated into this Agreement, despite the fact that such forms may be utilised by representatives of one or both Parties or accepted by the other without objection. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing

and signed by an authorized signatory of Customer and the Remix. Each party acknowledges that it has not entered into this Agreement in reliance on and shall have no remedies in respect of any representation or warranty that is not set out in this Agreement. Should this Agreement be executed in two languages, the English language version represents the understanding of both Parties. Any other version is provided as a translation. In the event of conflict between the two versions, the English language version will prevail.

13.14 Permissive Cooperative Agreement. To the extent permitted by applicable law and as additional consideration for this Contract, Remix agrees to extend an option to purchase any Services covered under this Contract under the same terms and conditions set forth herein, as well as any additional terms and conditions specific to their local requirements upon mutual agreement between the parties, to (i) other contracting agencies of Customer and (ii) any other agency that has entered into, or in the future enters into, a cooperative purchasing agreement or similar arrangement with Customer (collectively, such other agencies are referred to herein as "Contracting Members"). Each Contracting Member shall negotiate its own pricing terms and execute its own contract with Remix.

EU Terms and Conditions

These Terms and Conditions ("**Terms**") together with an Order incorporating these Terms (the "**Agreement**"), are entered into between Via Technologies Europe B.V., a Dutch private limited liability company with its registered address at Keizersgracht 467, 1017 DK Amsterdam, Netherlands ("**Remix**"), and the customer identified on the Order Form ("**Customer**"), and are effective as of the date the Effective Date in the Order (the "**Effective Date**").

1. Definitions

Capitalized terms will have the meanings set forth in this Section 1, or in the section in which they are first used.

1.1 "Authorized User" means each of Customer's employees, agents, personnel, contractors who are authorized to access the Remix Solution under this Agreement.

1.2 "Customer Content" means any content, data and information provided to Remix by or on behalf of Customer or its Authorized Users for use with the Services, including, without limitation, any Mobility Provider Data. Customer Content does not include Licensed Material, Resultant Data or Documentation.

1.3 "Documentation" means the materials describing the use and operation of the Remix Solution that are made available to Customer as written technical briefs or on <https://help.remix.com/> or such other web page as Remix may designate to Customer from time to time.

1.4 "Intellectual Property Rights" means any and all now known or hereafter existing intellectual property rights, including: (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights;

and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.5 "Licensed Material" means any reports or results generated by Customer as part of the Services. Licensed Material does not include the Remix Solution or any component thereof.

1.6 "Mobility Provider" means an operator of a transportation or rideshare service or platform that provides or facilitates transportation by train, bus, car, bicycle, scooter or any other mode of transportation and is required to provide transportation related data and information to Customer (or its third party designees) by contract, permit or other applicable ordinance, regulation or law.

1.7 "Mobility Provider Data" means any data or other information made available to Remix by a Mobility Provider at the direction, or for the specific benefit, of the Customer, even if Remix's receipt of such information is governed by its own agreement with the Mobility Provider.

1.8 "Order" means the service order signed by both parties that incorporates these Terms.

1.9 "Remix Solution" means the Remix software-as-a-service application identified in any Order that allows Authorized Users to access

certain features and functions through a web interface.

1.10 "Resultant Data" means statistics, data, insights, observations, analyses, ideas and other information that does not identify any natural person and is derived from the categorization, modeling or other processing of one (or more) data set(s), including, without limitation, data sets that include Customer Content and data of Remix's other customers.

1.11 "Services" means any services provided by Remix to Customer under this Agreement as described in an Order Form, including, but not limited to, provision of the Remix Solution and Professional Services.

2. Provision of Services

2.1 Access. Subject to the Customer's advance payment of the fees set forth in the Order ("**Fees**"), Remix will grant Customer Use Rights (as defined below) for the Remix Solution for the duration of the Term (as defined below). Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Remix Solution, and notify Remix promptly of any such unauthorized use known to Customer.

2.2 Support Services. Subject to the terms and conditions of this Agreement, Remix will exercise commercially reasonable efforts to (a) provide support for the use of the Remix Solution to Customer, (b) keep the Remix Solution operational and available to Customer, in each case in accordance with its standard policies and procedures, and (c) provide the Service in accordance with the Service Level Terms set out in Exhibit A.

2.3 Hosting. Remix will, at its own expense, provide for the hosting of the Remix Solution, provided that nothing herein will be construed to require Remix to provide, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Customer or any Authorized User to access the Remix Solution from the Internet.

3. Intellectual Property

3.1 Use Rights. Subject to the terms and conditions of this Agreement, Remix grants the Customer non-exclusive, non-transferable (except as permitted under Section 13.6), subscription access and use rights to the Remix Solution during the Term (as defined below), solely for Customer's internal business purposes

and in accordance with the limitations (if any) set forth in the Order, (a) to access and use the Remix Solution and in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer's use of the Remix Solution ("Use Rights"). Customer may permit any Authorized Users to access and use the features and functions of the Remix Solution as contemplated by this Agreement, provided Customer remains fully responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and ensuring any use of the Services by such individuals is for the sole benefit of Customer.

3.2 Restrictions. Customer will not, and will not permit any Authorized User or other party to: (a) allow any third party to access the Remix Solution, Licensed Material or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Remix Solution, Licensed Material or Documentation; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Remix Solution or Documentation for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code or the underlying ideas, algorithms, know-how,

structure or organization or nonpublic APIs of the Remix Solution, except as permitted by law; (e) interfere in any manner with the operation of the Remix Solution or the hardware and network used to operate the Remix Solution; (f) modify, copy or make derivative works based on any part of the Remix Solution or Documentation; (g) access or use the Remix Solution to build a similar or competitive product or service; (h) attempt to access the Remix Solution through any unapproved interface; or (i) otherwise use the Remix Solution, Licensed Material, or Documentation in any manner that exceeds the scope of use permitted under Section 3.1 or 3.3 or in a manner inconsistent with applicable law, the Documentation, or this Agreement.

Customer acknowledges and agrees that the Remix Solution will not be used, and is not licensed for use, in connection with any of Customer's time-critical or mission-critical functions. Customer will not remove, alter, or obscure any proprietary notices (including copyright and trademark notices) of Remix or its licensors on the Licensed Material or any copies thereof.

3.3 Ownership. As between the parties, the Customer Content, and all worldwide Intellectual Property Rights in it, is the exclusive property of Customer. All rights in and to the Customer Content not expressly granted to

Remix in this Agreement are reserved by Customer. As between the parties, the Remix Solution, Licensed Materials, Documentation and Resultant Data, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Remix and its suppliers. All rights in and to the Remix Solution, Licensed Materials, Documentation and Resultant Data not expressly granted to Customer in this Agreement are reserved by Remix and its suppliers.

3.4 License to Licensed Material. Subject to the terms and conditions of this Agreement, Remix grants Customer a non-exclusive, non-transferable (except as permitted under Section 13.6), non-sublicensable, royalty-free and fully-paid license during the Term to use Licensed Material solely for Customer's internal business purposes and, where Customer is a governmental body, to publicly display the Licensed Material as reasonably necessary to exercise its official authority or fulfill its legal obligations, including, without limitation, to solicit public comment on information contained in Licensed Material.

3.5 License to Customer Content; Resultant Data. Customer grants Remix a non-exclusive, worldwide, non-transferable (except as permitted under Section 13.6), non-

sublicensable (except to permitted subcontractors under Section 13.10), royalty-free and fully paid license to (a) use the Customer trademarks, service marks, and logos as required to provide the Services; (b) to use, host, store, create derivative works from, communicate, distribute and publicly display the Customer Content as required to perform the Services and improve the Remix Solution; and (c) analyze the Customer Content, combine Customer Content with other data and create Resultant Data, including, without limitation, utilizing machine learning applications and other analytical methods. Customer acknowledges that the value of the Remix Solution to Customer and Remix's ability to provide it in accordance with this Agreement are contingent on Remix's ability to operate and improve the Remix Solution based on what it learns from the Resultant Data generated in the course of delivering the Remix Solution to all Remix customers.

3.6 Open Source. Certain items of software may be provided to Customer with the Remix Solution and certain Licensed Materials are subject to "open source" or "free software" licenses ("**Open Source Material**"). Some of the Open Source Material is owned by third parties. Open Source Materials are not subject to the terms and conditions of Sections 3.1 or 10.

Instead, each item of Open Source Materials is licensed under the terms of the end-user license that accompanies such Open Source Materials. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Materials. If required by any license for particular Open Source Materials, Remix makes such Open Source Materials, and Remix's modifications to that Open Source Materials, available by written request at the notice address specified below.

3.7 Third Party Products. Certain features and functionality of the Services may rely on third party data, software, or applications ("**Third Party Products**"). Such Third-Party Products may be subject to their own terms and conditions, which will be identified to the Customer in writing before they are incorporated into the Services. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products or utilize any features or functionality of the Services that incorporate them.

3.8 Feedback. Customer hereby grants to Remix a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use and / or incorporate into the Services any

suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the Services. Remix will not identify Customer as the source of any such feedback.

4. Fees and Expenses; Payments

4.1 Fees. In consideration for the Use Rights granted to Customer and the Services performed by Remix under this Agreement, Customer will pay to Remix the Fees. Fees shall be paid in full in advance of access, except as otherwise provided in the Order Form in which case all Fees shall be billed at the end of the month due and payable within thirty (30) days of the date of the invoice. Customer will reimburse Remix for documented expenses that are expressly provided for in an Order Form or SOW (defined below) or that have been approved in advance in writing by Customer. Remix reserves the right (in addition to any other rights or remedies Remix may have) to discontinue the Remix Solution and suspend all Authorized Users' and Customer's Use Rights to the Services including if any Fees are more than thirty (30) days overdue until such amounts are paid in full. If Customer believes that Company has billed

Customer incorrectly, Customer must contact Remix no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's accounts receivables department. Except where price is fixed under the Order Form for the Term, Remix may renegotiate with the customer's and agree an annual price increase if (i) additional features are added or improvements to features to the extent costs of providing the Services have increased, or (ii) in response to market changes such as labour costs, currency fluctuations, changes in taxes/regulations, inflation, license fees, infrastructure and administrative costs.

4.2 Taxes. The Fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Remix's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of the Services, or the license of the Remix Solution to Customer. Customer will make all payments of Fees to Remix free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on

payments of Fees to Remix will be Customer's sole responsibility, and Customer will provide Remix with official receipts issued by the appropriate taxing authority, or such other evidence as the Remix may reasonably request, to establish that such taxes have been paid.

4.3 Interest. Any amounts not paid when due will bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, from the due date until paid.

5. Customer Content and Responsibilities

5.1 Licenses; Customer Content. Customer will obtain all third party licenses, consents and permissions needed for Remix to use the Customer Content to provide the Services and exercise its rights under this Agreement. Customer is solely responsible for the accuracy, quality, integrity, legality, and reliability of all Customer Content.

5.2 Customer Warranty. Customer represents and warrants that the Customer Content and its use by Remix in accordance with this Agreement will not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene,

pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage Remix's system or data; and (e) otherwise violate the rights of a third party or applicable law.

5.3 Back-ups; Security. Customer will have the ability to export Customer Content out of the Remix Solution for the Term of the relevant Order Form and thereafter in accordance with Section 11.4. Customer acknowledges that the Remix Solution is not intended to serve as its data retention repository and that Customer is solely responsible for creating its own backup copies of any Customer Content at Customer's sole cost and expense. Customer and its Authorized Users will have access to the Customer Content and will be responsible for all changes to and/or deletions of Customer Content by Customer and the security of all usernames, passwords, API keys and other credentials required to access the Remix Solution. Customer will be responsible for any and all actions taken using Customer's accounts and passwords. If any Authorized User who has access to the Remix Solution is no longer an employee of or engaged by Customer, then Customer will immediately delete such access and otherwise terminate such Authorized User's access to the Remix Solution.

5.4 Mobility Provider Cooperation. Customer acknowledges that the performance of the Services (and value of the Services to Customer) may depend on Remix's receipt of data or other information or cooperation from one or more Mobility Providers. Therefore, Customer shall be responsible for taking all actions reasonably required to ensure such Mobility Providers provide such data, information or cooperation to Remix as is reasonably required for Remix to perform the Services, including, without limitation, requiring Mobility Providers to make available to Remix any and all data and information to which Customer is entitled in accordance with Remix's then applicable data specifications, and without requiring Remix to pay any additional consideration to, or sign any agreement with, the Mobility Provider that would interfere with the provision of services or grant of licenses under this agreement. Customer acknowledges and agrees that (a) Remix shall have no liability for a Mobility Provider's failure to provide such data, information or cooperation or other action or omission and (b) a Mobility Provider shall in no event be construed as a Remix supplier, contractor or agent even if Remix enters into a license or other agreement with such Mobility Provider to obtain data or information in furtherance of the Services.

6. Freedom of Information Requests

6.1 Freedom of Information Requests. Remix will cooperate with Customer's requests to provide information that Customer requires to comply with its legal obligations under applicable freedom of information laws, provided that to the extent such cooperation exceeds the scope of Services specified in an Order Form.

7. Warranties and Disclaimers

7.1 Limited Warranty. Remix represents and warrants that it will provide the Services and perform its other obligations under this Agreement in a professional and workmanlike manner and in substantial conformity with the Documentation. Remix's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Remix to use commercially reasonable efforts to correct the reported non-conformity, or if Remix determines such remedy to be impracticable, either party may terminate the portion of the Services affected by the breach of warranty and Customer will receive as its sole remedy a refund of any Fees Customer

has pre-paid for use of such Services for the terminated portion of the applicable Term. The limited warranty set forth in this Section 7.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by use not in accordance with the Documentation, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided on a no-charge, trial or evaluation basis.

7.2 Disclaimer. The Limited warranty set forth in Section 7.1 is made for the benefit of Customer only. Except as expressly provided in Section 7.1 and to the maximum extent permitted by applicable law, the Services, Licensed Material and Documentation are provided "As Is" and neither Remix nor its Suppliers makes (and such Parties hereby disclaim) any other warranties, representations, or conditions, whether written, oral, express, implied or statutory, including without limitation, any implied warranties of satisfactory quality, course of dealing, trade usage or practice, system integration, data accuracy, merchantability, title, no infringement, or fitness for a particular purpose. Remix does not warrant that all errors can be corrected, or that operation of the Remix Solution will be uninterrupted or error-free. Remix shall not be liable for delays, interruptions, service failures or

other problems inherent in use of the internet and electronic communications, third party platforms, other systems outside the reasonable control of Remix or the accuracy, quality, integrity, legality or reliability of mobility provider data.

8. Limitation of Liability

8.1 Types of Damages. Except with respect to a Party's liability under section 10, in no event will either Party be liable to the other Party for any: incidental, indirect, special, consequential or punitive damages, regardless of the nature of the claim, including without limitation: Lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from any source, even if a party has been advised of the possibility of such damages. This Limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have been proven ineffective. Nothing in this Agreement shall limit the Customer's payment obligations under this Agreement.

8.2 Amount of Damages. The maximum liability of either Party arising out of or in any way

connected to this Agreement will not exceed the Fees paid by Customer to Remix during the twelve (12) months preceding the act, omission or occurrence giving rise to such liability. In no event will Remix's suppliers have any liability arising out of or in any way connected to this Agreement. Nothing in this Agreement excludes liability for fraud or fraudulent misrepresentation or for death or personal injury caused by negligence.

8.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this Section 8 will survive and continue in full force and effect regardless of any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

8.4 Nature of Claims and Failure of Essential Purpose. The parties agree that the waivers and limitations specified in this Section 8 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

8. Confidentiality

9.1 Confidential Information. "Confidential

Information" means any code, inventions, analysis methods and products, know-how, business, technical and financial information, and any other nonpublic information of a party (the "**Disclosing Party**"), whether disclosed orally or in written or digital media, that it discloses to the other party (the "**Receiving Party**") and identifies as "confidential" or with a similar legend at the time of such disclosure or that the Receiving Party knows or should have known is the confidential or proprietary information of the Disclosing Party. The Services, Documentation and all enhancements and improvements thereto will be considered Confidential Information of Remix.

9.2 Protection of Confidential Information.

Except as expressly authorized herein, the Receiving Party will (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations, and exercising its rights, under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Customer) who have a need to know such information for the purpose of the performance of the Receiving

Party's obligations or exercising its rights under this Agreement, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will, upon request, certify to the Disclosing Party its compliance with this sentence.

9.3 Exceptions. The confidentiality obligations set forth in Section 9.2 will not apply to any information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure free of

any confidentiality duties or obligations; or (d) the Receiving Party can demonstrate, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information (i) to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law (including, without limitation, freedom of information laws) or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure to the extent permitted by law, cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order, discloses no more information that is legally required, and in the case of disclosure required by freedom of information laws, Customer agrees to afford all confidentiality protections available under applicable law to such Confidential Information of Remix prior to disclosing it pursuant to such laws, including, without limitation, by providing Remix notice of freedom of information requests for such Confidential Information, the opportunity to object to Customer's disclosure thereof, and notice of Customer's disclosure

determinations; and (ii) to its attorneys, accountants, professional advisors, and actual or potential lenders, investors or acquirers so long as such parties are bound by confidentiality obligations no less restrictive than those set forth herein.

10. Indemnification

10.1 By Remix. Remix will defend at its expense any claim brought against Customer insofar as such claim is based on a claim by any third party alleging that the Remix Solution infringes such third party's patent, copyright or trademark rights under applicable laws of any jurisdiction within the United States of America, and will indemnify and hold harmless Customer from and against any damages, expenses and costs finally awarded against Customer or agreed in settlement by Remix (including reasonable attorneys' fees and costs) resulting from such claim. If any portion of the Remix Solution becomes, or in Remix's opinion is likely to become, the subject of a claim of infringement, Remix may, at Remix's option: (a) procure for Customer the right to continue using the Remix Solution; (b) replace the Remix Solution with non-infringing software or services which do not materially impair the functionality of the Remix

Solution; (c) modify the Remix Solution so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused prepaid Fees for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Remix Solution and Documentation. Notwithstanding the foregoing, Remix will have no obligation under this Section 10.1 or otherwise with respect to any infringement claim based upon (i) any use of the Remix Solution not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the Remix Solution in combination with other products, equipment, software or data not supplied by Remix; (iii) any modification of the Remix Solution by any person other than Remix or its authorized agents; or (iv) Customer's settlement or admission with respect to any claim without Remix's prior written consent (each an **"Exclusion"**). This Section 10.1 states the sole and exclusive remedy of Customer and the entire liability of Remix, or any of its officers, directors, employees, shareholders, contractors, suppliers or representatives, for infringement claims and actions.

10.2 By Customer. Customer will defend at its expense any claim brought against Remix insofar as such claim is based on a claim by any third party arising from or relating to the

Customer Content, the breach or alleged breach by Customer of Section 5.2 (Customer Warranties), or any Exclusion, and Customer will indemnify and hold harmless Customer from and against any damages, expenses and costs finally awarded against Customer or agreed in settlement by Customer (including reasonable attorneys' fees and costs) resulting from such claim.

10.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

11. Term and Termination

11.1 Term. Unless otherwise stated in the applicable Order Form, the term of this Agreement will begin on the Effective Date set out in the Order Form and continue in full force and effect for the time period specified therein, unless earlier terminated in accordance with this

Agreement (the "Term"). Thereafter, the Parties may renew the Agreement in writing by mutual consent. If the Agreement is not renewed by mutual consent in writing, this Agreement shall either: 1) terminate at the end of the Term in accordance with this clause 11, or 2) the parties may agree in writing a short term renewal for up to 3 additional months until a longer term renewal is executed by the parties.

11.2 Termination for Breach. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

11.3 Effect of Termination. Upon termination of this Agreement for any reason: (a) all licenses granted hereunder will immediately terminate; (b) promptly after the effective date of termination, each party will comply with the obligations to delete or return all Confidential Information of the other party, as set forth in the Section 9; provided that, for clarity, Remix is not obligated to delete or return Resultant Data; and (c) any amounts owed to Remix under this Agreement will become immediately due and payable. Sections 1, 3.3-3.8, 4, 5.3, 5.4, 7.2, 8, 9,

10, 11.3, 11.4, 12 and 13 will survive termination of this Agreement for any reason.

11.4 Data Extraction. For sixty (60) days after the end of the Term, as applicable, Remix will make Customer Content and Licensed Materials available to Customer through the Remix Solution on a limited basis solely for purposes of Customer retrieving such Customer Content and Licensed Materials, except to the extent Remix has instructed Customer to delete it. After such period, Remix may destroy all copies of Customer Content and Licensed Materials in its possession.

12. Co-Marketing

At the request of Remix, Customer agrees to the issuance of a joint press release on a mutually agreed upon date or the 90th day from the Effective Date, whichever is earlier. Each party will have the right to approve the press release in advance, but such approval will not be unreasonably delayed or withheld. Customer also agrees to use of Customer's name and logo on Remix's web site and in Remix promotional materials. Customer agrees that Remix may disclose Customer as a customer of Remix.

13. Miscellaneous

13.1 Governing Law and Venue. This Agreement and any action arising out of or related to it will be governed and interpreted by and under the laws of England and Wales. Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under LCIA rules, which rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language used in the arbitral proceeding shall be English. The Customer acknowledges and agrees that the language to be used in any proceedings or claim shall be English.

13.2 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

13.3 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any

other provision or of such provision on any other occasion.

13.4 No Assignment. Except as provided in Section 13.10, neither party will assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted such assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns.

13.5 Compliance with Law. Customer will always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services, Licensed Material and Documentation.

13.6 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of Fees owed) or failure to perform such duties or obligations will not be considered a breach of this

Agreement if such delay or failure is caused by a labor dispute, shortage of materials, fire, earthquake, flood, denial of service or other cyber-attack, diminishment of telecommunications or data networks or services, refusal of a license by a government agency or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

13.7 Independent Contractors. Customer's relationship to Remix is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have and will not represent to any third party that it has, any authority to act on behalf of Remix.

13.8 Subcontractors. Remix may use the services of subcontractors and permit them to exercise the rights granted to Remix in order to provide the Services under this Agreement, provided that Remix remains responsible for (a) compliance of any such subcontractor with the terms of this Agreement and (b) for the overall performance of the Services as required under this Agreement.

13.9 Notices. All notices required or permitted under this Agreement must be delivered in writing, if to Remix, by emailing

legal@ridewithvia.com and if to Customer by emailing the Customer Point of Contact email address listed on the Cover Page, provided, however, that with respect to any notices relating to breaches of this Agreement or termination, a copy of such notice will also be sent in writing to the other party at the address listed on the Cover Page by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Each party may change its email address and/or address for receipt of notice by giving notice of such change to the other party.

13.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

13.11 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters and supersedes all prior agreements, understandings and arrangements between the parties whether oral or written of any nature whatsoever with respect to such subject matters. The parties acknowledge that pursuant to current practices, standard quotation forms, purchase orders and other forms (including

terms and conditions contained in catalogues) may be utilised by Customer, which forms contain terms and conditions intended to be applicable to a purchase and sale between a buyer and a vendor. The parties agree that, except as expressly provided in the Agreement, no such terms and conditions as appear on such standard forms or catalogues shall be incorporated into this Agreement, despite the fact that such forms may be utilised by representatives of one or both Parties or accepted by the other without objection. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and the Remix. Each party acknowledges that it has not entered into this Agreement in reliance on and shall have no remedies in respect of any representation or warranty that is not set out in this Agreement. Should this Agreement be executed in two languages, the English language version represents the understanding of both Parties. Any other version is provided as a translation. In the event of conflict between the two versions, the English language version will prevail.

13.12 Permissive Cooperative Agreement. To the extent permitted by applicable law and as additional consideration for this Contract, Remix

agrees to extend an option to purchase any Services covered under this Contract under the same terms and conditions set forth herein, as well as any additional terms and conditions specific to their local requirements upon mutual agreement between the parties, to (i) other contracting agencies of Customer and (ii) any other agency that has entered into, or in the future enters into, a cooperative purchasing agreement or similar arrangement with Customer (collectively, such other agencies are referred to herein as "Contracting Members"). Each Contracting Member shall negotiate its own pricing terms and execute its own contract with Remix.

Exhibit A

Service Levels

The Services shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Remix's control will also be excluded from any such calculation. Customer's sole and exclusive

remedy, and Remix's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Remix will credit Customer 5% of Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

Subscribe to our periodic mailing list

Every now and again, we'll share updates and inspiration related to building livable cities from the global Remix community.

What's your email?

You may [opt-out](#) at any time.

Solutions

- Transit
- On-demand
- Scheduling
- Streets
- Shared Mobility

Explore

- Streets & Shared Mobility
- Transit & Streets
- Data Platform

Resources

- Customers
- Resource Library
- Blog
- Transpo Talk

- About Us
- Careers
- News
- Get in Touch
- Security & Trust
- Privacy Policy
- Cookie Settings



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: December 5, 2022

SUBJECT: Planning and Development Services – Approval – Final Acceptance for CIP 22-01 Rubberized Cape Seal 2022.

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

None.

RECOMMENDATION

For the City Council to accept the contracted work performed as complete and authorize recording of the notice of completion.

EXECUTIVE SUMMARY

The project involved installing chip seal binder and rubberized cape seal in various areas of the City of Clovis. The construction involved approximately 71,000 square yards of rubberized cape seal and approximately 251,000 square yards of Type II slurry seal at various additional streets by American Asphalt South, Inc. The work included removal of all existing traffic striping, markings and markers, furnishing and installation/application of asphalt rubber chip seal, Type II slurry seal, traffic control, street sweeping, cleanup, traffic striping and all other items or details required as described in the Contract Documents.

BACKGROUND

The bid opening was on March 22, 2022, and the project was awarded by City Council on April 4, 2022, to the lowest responsible bidder, which was determined to be American Asphalt South, Inc. The project was completed in accordance with the construction documents and within the total contract time allowed.

FISCAL IMPACT

1. Contract Award Amount	\$1,203,993.09
2. Cost Increases/Decreases - resulting from differences between estimated quantities used for award and actual quantities installed	(\$8,456.76)
3. Contract Change Orders	\$0.00
4. Liquidated Damages Assessed	\$0.00
Final Contract Cost	\$1,195,536.33

The Project was supported by Measure C pass through funding through the City Community Investment Program. The portion of the project located in the Blackhorse subdivision was funded by assessment district proceeds.

REASON FOR RECOMMENDATION

The Public Utilities Department, City Engineer, Engineering Inspector, and 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, American Asphalt South, Inc., has requested final acceptance.

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: Nav Chahal, Engineering Inspector

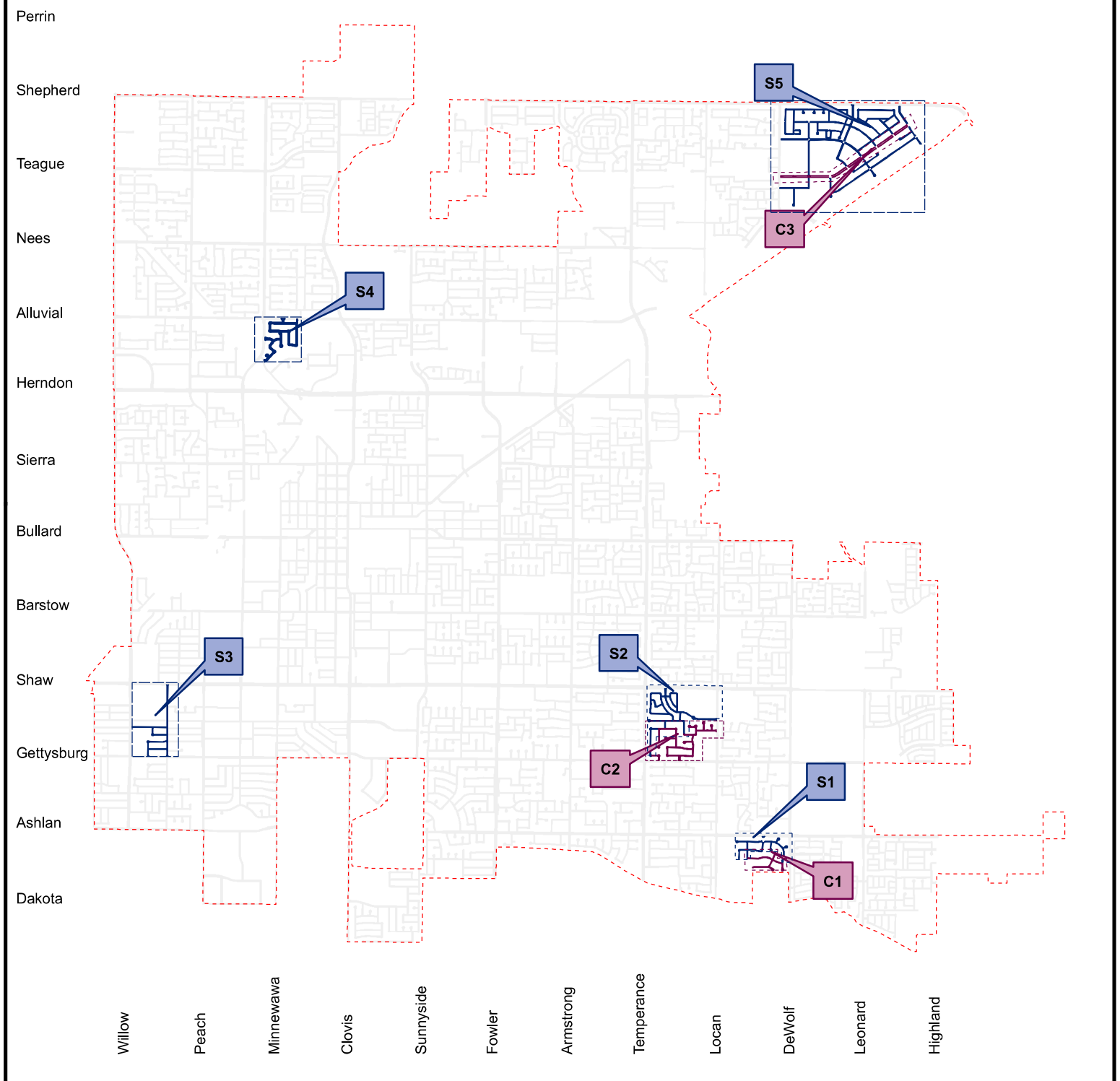
Reviewed by: City Manager *AK*

VICINITY MAP

AGENDA ITEM NO. 7.

CIP 22-01 RUBBERIZED CAPE SEAL 2022

City of Clovis Project Locations



Attachment 1

CLOVIS CITY LIMITS



1"=5,000'

124



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: December 5, 2022

SUBJECT: Planning and Development Services - Approval – Res. 22-____, Annexation of Miscellaneous Properties to the Landscape Maintenance District No. 1.

ATTACHMENTS: 1. Res. 22-____

CONFLICT OF INTEREST

None.

RECOMMENDATION

For the City Council to approve Resolution 22-____ approving annexation of miscellaneous properties into City of Clovis Landscape Maintenance District (LMD) No. 1.

EXECUTIVE SUMMARY

The developers / property owners of the properties listed in Attachment A have submitted executed landscape maintenance covenants, copies of which are on file with the City Clerk, indicating consent to annexation of the subject property into the City of Clovis Landscape Maintenance District No. 1. This action will annex each of these properties into the Landscape Maintenance District so that they can be assessed for maintenance costs within their respective areas.

BACKGROUND

Council formed the original district on July 15, 1985, for the purpose of funding the maintenance of landscaped areas and parks. These properties are being brought to Council for annexation to the district as a group rather than separately in an effort to conserve staff resources and Council's time. Under the provisions of the Landscaping and Lighting Act of 1972, if all of the owners of property proposed for annexation provide written consent to annexation, then noticing, hearing, and filing of an Engineer's Report is not required.

Under the provisions of the Landscaping and Lighting Act of 1972, and in accordance with Article XIII C and Article XIII D of Proposition 218, all the owners of property proposed for annexation have provided a written request and consent to annexation, and have executed a covenant (petition) indicating acceptance of the annual assessment.

FISCAL IMPACT

This project will add any landscaped areas and will incrementally increase maintenance revenue through annual assessments from the annexed properties. Current year to date status of landscape maintenance district facilities is as follows:

	<u>Various LMD's Under Consideration</u>	<u>Year to Date</u>
LMD Landscaping added:	0.000 acres	11.535 acres
Resource needs added:	0.000 person	1.154 person

The resource needs estimate is based on 1 person per 10 acres of landscaped area.

REASON FOR RECOMMENDATION

The property owners for the miscellaneous properties have requested or consented to annexation into the City of Clovis LMD No. 1.

ACTIONS FOLLOWING APPROVAL

The miscellaneous properties shall become a part of the City of Clovis LMD No. 1 and will be assessed next year for maintenance costs.

Prepared by: Jeff Brown, Engineer II

Reviewed by: City Manager *AH*

RESOLUTION 22-____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING ANNEXATION TO LANDSCAPING MAINTENANCE DISTRICT NO. 1 OF THE
CITY OF CLOVIS**

WHEREAS, City of Clovis Landscape Maintenance District No. 1 ("District") was formed by Resolution No. 85-78, adopted July 15, 1985, pursuant to Part 2 of Division 15 of the Streets and Highways Code (Landscape and Lighting Act of 1972), herein the "Act"; and

WHEREAS, all of the owners of property proposed to be annexed to the District consisting of proposed developments as described in Attachment A attached hereto and incorporated herein by reference, have consented to said annexation and such annexation may be ordered without notice and hearing or filing of engineer's report, or both.

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

1. That the public interest and convenience require that certain property described in Attachment A attached hereto and by reference incorporated herein be annexed into Landscape Maintenance District No. 1 of the City of Clovis for the maintenance and servicing of landscaping facilities.
2. The City Clerk shall receive and file the maps showing the boundaries of the areas annexed as set forth in Attachment A which boundaries shall be used for assessment proceedings until and unless a change of organization is approved pursuant to the Act.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on December 5, 2022, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: December 5, 2022

Mayor

City Clerk

Attachment A

Miscellaneous properties to be added to the Landscape Maintenance District No. 1 of the City of Clovis:

	Project Number	Address	Developer/Owner
1	Building Permit No. 22-02886	375 N. Argyle Ave	King Assests 2 LLC, A Wyoming Limited Liability Company
2	SPR 2021-004	622 N Pollasky Ave	Gary K. Shahbazian and Deborah A. Shahbazian
3	Building Permit No. 07-2070	1455 Gibson Ave	Mary E. Martinez
4	Building Permit No. 08-1670	92 N. Pollasky Ave	Darryl H. Johnson
5	Building Permit No. 09-2165	155 Rall Avenue	Dorn Management, LLC, A California Limited Liability Company
6	Building Permit No. 07-03615	647 W. Keats Ave	Lee Phillips
7	Building Permit No. 08-2789	691 W. Norwich Ave	James A. Heisdorf
8	Building Permit No. 08-1730	381 W. Swift Ave	Francisco Romero Aguayo
9	Building Permit No. 09-0954	124 Caesar Ave	Michael M Sobeck and Sandra Sobeck
10	Building Permit No. 08-2774	184 Caesar Ave	Mark A. Reynders and Jo Linda Reynders
11	Building Permit No. 08-1586	3051 Terry Ave	Patricia S. Coulter
12	Parcel Map 2022-002	NWC of Villa Ave and Sierra Ave	Gleneagle Homes, a California Corporation
13	Building Permit No. 07-2937	95 W. National Ave	James Williams and Allana Charisce Williams
14	Building Permit No. 08-1430	1450 Bullard Ave	Guadalupe Sandoval and Socorro Sandoval
15	Building Permit No. 10-0193	230 Seventh Street	Raul Bustamante and Margarita Bustamante
16	Building Permit No. 11-0352	1108 Third Street	Christopher J Netzley and Sherry Netzley

17	Building Permit No. 11-0211	2560 Villa Ave	Ismael Martinez
18	Building Permit No. 985-2011	21 N Woodworth Ave	Christine S Lingenfelter
19	Building Permit No. 09-02419	993 Rosebrook Drive	Virginio J. Manzano and Gabriela Manzano
20	Building Permit No. 09-2323	126 Mitchell Ave	Alan M Vong and Jeannie Lai
21	Building Permit No. 10-0153	2605 DeWitt Ave	Ky Tong Vong and Tanie Chiomi Vong
22	Building Permit No. 09-1360	1056 DeWitt Ave	Lois M Bishop
23	Building Permit No. 10-2358	338 W Antonio Drive	Patrick L Maddox and Joye R Maddox
24	Building Permit No. 09-2418	79 W Ashcroft Ave	Anita Heath
25	Building Permit No. 09-0539	1524 Beverly Ave	Panut S Willaims
26	Building Permit No. 08-3022	3094 Adler Ave	Carl F. Larsen
27	Building Permit No. 10-2238	1534 San Gabriel Ave	Allan W Braswell and Heidi Braswell
28	Building Permit No. 10-1554	1382 Rall Ave	Perry W Coy, Jr. and Emma Lee Coy
29	Building Permit No. 10-0828	2300 Burgan Ave	Lori Ann Ravizza
30	Building Permit No. 10-0834	1451 Burgan Ave	Lloyd L. Wilfong, Jr. and Danielle C. Wilfong
31	Building Permit No. 10-2035	2036 Mitchell Ave	Gene D Sims and Cindy L Langley
32	Building Permit No. 08-1652	1549 Douglas Ave	Albert Sheakalee and Lorik Sheakalee
33	Building Permit No. 08-0980	2160 Santa Ana Ave	Gary J. Dixon and Gina O. Dixon
34	Building Permit No. 07-3017	582 Timmy Ave	Adrian Pena and Alicia B. Pena
35	Building Permit No. 11-0274	1959 Swift Ave	Naomi R Isaak
36	Building Permit No. 08-02336	1831 Richert Ave	Gary L. Morris and Teri Morris
37	Building Permit No. 08-1817	3551 Sunnyside Ave	Greg W. Austin



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: December 5, 2022

SUBJECT: Public Utilities – Approval – Authorize the Purchase of Supervisory Control and Data Acquisition Human Machine Interface (SCADA HMI) Software from Inductive Automation, LLC for \$52,081.60; and Approval – Waive Formal Proposal Procedures and Authorize the City Manager to Enter into an Agreement with TESCO Controls, Inc. to Integrate the new SCADA HMI Software for \$279,315.

ATTACHMENTS: None.

CONFLICT OF INTEREST

None.

RECOMMENDATION

1. For the City Council to award the request for proposal (RFP) to Inductive Automation, LLC and authorize the purchase of their Supervisory Control and Data Acquisition (SCADA) Human Machine Interface (HMI) software in the amount of \$52,081.60; and
2. For the City Council to waive the City's formal request for proposal (RFP) procedures and authorize the City Manager to execute a contract with TESCO Controls, Inc. (TESCO) in the amount of \$279,315.00 to provide professional services for integrating the new SCADA HMI software.

EXECUTIVE SUMMARY

The existing City water wells, reservoirs, and sewer lift stations are currently running on a 10-year-old version of SCADA HMI software from Wonderware. This software does not meet current industry standards in security, functionality, compatibility, and support and needs to be upgraded. The system was integrated by TESCO in 2013 to provide remote control, monitoring, and data collection for various water and sewer facilities throughout the City.

Staff issued a Request for Proposals (RFP) to purchase a suitable SCADA HMI software upgrade on July 1, 2022, and received four (4) timely responses. Staff evaluated and scored the proposals and determined that Inductive Automation is the recommended software supplier based on their proposal, qualifications, experience, and cost.

Staff is recommending that Council award the contract for the purchase of SCADA HMI software to Inductive Automation in the amount of \$52,081.60 and authorize the City Manager to execute a contract on behalf of the City.

Staff is also requesting that Council waive formal proposal procedures and authorize the City Manager to execute a contract to TESCO to be the system integrator for this project, authorized by Clovis Municipal Code Section 2.7.06(a) and Section IV.C. of the City's Purchasing Manual. TESCO is a Gold Certified system integrator for Inductive Automation, and fully understand the City's SCADA environment. The current SCADA system was integrated by TESCO in 2013, as well as all prior SCADA HMI systems dating back to 1982.

BACKGROUND

The City of Clovis uses a Supervisory Control and Data Acquisition (SCADA) system to monitor, maintain, and control approximately 60 sites in the City, including wells, pump stations, lift stations, and reservoirs. The existing SCADA system for the City water wells, reservoirs, and sewer lift stations consists of physical servers and Human Machine Interface (HMI) software developed by Wonderware and integrated by TESCO. It has been in operation for almost 10 years without any updates to the software and is no longer supported by the manufacturer. In preparation for a SCADA HMI upgrade, staff purchased and deployed a virtualized server infrastructure last year to replace the outdated physical servers and to eventually host the new HMI software.

Staff developed and issued a Request for Proposals (RFP) for the SCADA HMI software on July 1, 2022. Four (4) proposals were received, as follows:

Vendor	HMI Software
AVEVA (Formerly Wonderware)	InTouch
ICONICS	GENESIS64
Inductive Automation	Ignition
Trihedral	VTScada

The proposal from Inductive Automation met all system and user requirements, demonstrated the ability to conform to current industry standards in SCADA security, provided the second lowest cost proposal, and is headquartered in California, providing support during the City's normal business hours when needed. The total cost for the proposed SCADA HMI software package is \$52,081.60.

TESCO has been the City's sole system integrator and supplier of telemetry equipment for the SCADA system for the City water wells and sewer lift stations system since 1982. TESCO is also a Gold Certified system integrator for Inductive Automation. The proposed cost to integrate the new SCADA HMI software is \$279,315.00.

FISCAL IMPACT

Funds were included in this fiscal year's Water and Sewer Enterprise budgets. Sufficient funds are available for the anticipated costs of the project. Annual support and maintenance for the software is estimated to be \$8,300 per year and will be budgeted for each fiscal year.

REASON FOR RECOMMENDATION

Sufficient funds have been budgeted to upgrade the existing SCADA system that has reached its end of support for both hardware and software. With the new virtualized server infrastructure already in place, a new SCADA HMI software and integration is all that remains to keep the system current.

TESCO has been the City's sole system integrator and supplier of telemetry equipment for the SCADA system since 1982. TESCO is familiar with the City's SCADA environment and have provided reliable support over the span of forty years. Staff is confident in TESCO's ability to integrate the new SCADA HMI software to allow for continued operations of the City's vital water and sewer facilities.

ACTIONS FOLLOWING APPROVAL

Staff will prepare a purchase order for the City Manager's approval for the purchase of the SCADA HMI software from Inductive Automation, and the City Manager will execute a contract with Tesco to provide professional services for integrating the new SCADA HMI software.

Prepared by: Hung Vu, Sr. Information Technology Analyst

Reviewed by: City Manager *AH*



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: December 5, 2022

SUBJECT: Public Utilities – Approval – Waive Formal Request for Proposal Procedures and Authorize the City Manager to Enter into an Agreement with Clean Energy Renewable Fuels, LLC, for Supply of Renewable Natural Gas for City Fleet Fueling and for Management of Natural Gas Fuel Revenue Credits.

ATTACHMENTS:

1. Base Agreement
2. Special Provisions Agreement
3. Fossil Transaction Agreement
4. RNG Transaction Agreement

CONFLICT OF INTEREST

None.

RECOMMENDATION

For the City Council to waive the City's formal request for proposal (RFP) procedures and authorize the City Manager to execute an agreement with Clean Energy Renewable Fuels, LLC (Clean Energy), for the supply of environmentally friendly Renewable Natural Gas (RNG) for the Solid Waste Division's Compressed Natural Gas (CNG) fleet, and for the management of natural gas fuel revenue credits over a three-year period, with the option for two additional one-year extensions.

EXECUTIVE SUMMARY

The Public Utilities Department dispenses approximately 250,000 gasoline gallon equivalent (GGE) units per year. An estimated \$175,000 could be saved annually via the proposed agreement at the current Renewable Identification Number (RIN) and Low Carbon Fuel Standard (LCFS) rates. Staff seeks to enlist and partner with a reputable vendor, Clean Energy, to supply RNG to the Public Utilities Department's CNG transportation fueling station and to provide management of program credits made available to CNG operators and users through CARB and EPA agencies. This action is at no cost to the City and there are no modifications required to the existing infrastructure or CNG-powered equipment.

Staff requests waiving formal proposal procedures and recommends piggybacking on an RFP solicited by Gold Coast Transit District, located in Oxnard, California. This is authorized by Clovis Municipal Code Section 2.7.06(a) and Section IV.C. of the City's Purchasing Manual. Clean Energy was selected based on a competitive proposal and staff recommends the same contract terms are used. Staff also received and reviewed a proposal from a second reputable RNG supplier and the proposal offered by Clean Energy is more favorable to the City.

BACKGROUND

The California Air Resources Board (CARB) developed the Low Carbon Fuel Standard (LCFS) program to reduce carbon intensity of transportation fuels used in California by 10% by 2020. These CARB regulations allow producers of low carbon fuels, including fossil Compressed Natural Gas (CNG), to earn LCFS credits. Consequently, the Public Utilities Department, with its own CNG fueling operation, qualifies to participate in this state program.

The Low Carbon Fuel Standard (LCFS) is a California state program that regulates transportation fuel providers and requires them to achieve an 80% reduction in carbon emissions by 2050. The Renewable Fuel Standard (RFS) is a federal program that has a goal to achieve 50% renewable transportation fuels in the US by 2030. These programs allow producers of renewable low carbon fuel, like RNG, to generate LCFS and RIN credits so long as the fuel is being used for transportation purposes.

RNG is methane captured from the decomposition of organic materials at landfills, agricultural facilities, and wastewater treatment plants. The pipeline quality bio-methane is injected into the natural gas pipeline grid and CNG that is currently used will be displaced with RNG. This "displacement" significantly reduces the carbon footprint because for every unit of RNG injected into the pipeline, an equal unit of fossil fuel is not extracted from the earth.

The eligible credits generated are based on the amount dispensed from the Public Utilities Department's CNG pumping station. This station serves approximately 40 CNG vehicles within the Solid Waste Division.

FISCAL IMPACT

The Fleet Maintenance budget will continue to include sufficient funds to pay PG&E for natural gas costs. A copy of the PG&E invoices will be provided to Clean Energy. LCFS credits will be generated and paid to the City on a quarterly basis and RIN credits will be paid on a monthly basis. The total estimated annual savings is \$175,000, which is approximately 70% of the total natural gas costs paid to PG&E annually for fuel used at the Fleet CNG station. These savings will ultimately be passed to the Solid Waste Division via reduced fuel costs to their operations and maintenance budget.

REASON FOR RECOMMENDATION

Staff recommends authorizing the Public Utilities Department to enter into an agreement with Clean Energy to supply RNG and provide natural gas fuel revenue credit management for a three-year term with an option for two one-year extension periods. This action will allow the Public Utilities Department to receive a proportionate share of the revenues generated from credits available through the state and federal natural gas fuel credit incentive programs.

Pursuant to the City's purchasing requirements, purchases of items/services exceeding \$60,000.00 require City Council approval following a formal bidding or proposal process, unless waived by the City Council. Waiving the City's formal bidding or proposal process for procuring a contract for RNG and related services and "piggybacking" on a competitively bid purchase contract by another public agency in California is authorized by Clovis Municipal Code Section 2.7.06(a) and Section IV.C. of the City's Purchasing Manual.

ACTIONS FOLLOWING APPROVAL

The attached agreements will be signed, initiating the purchase of RNG from Clean Energy and allowing the Public Utilities Department to receive offsetting revenue derived from credits from the state and federal incentive programs.

Prepared by: Paul Armendariz, Assistant Public Utilities Director

Reviewed by: City Manager AA

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: _____

The parties to this Base Contract are the following:

PARTY A City of Clovis	PARTY NAME	PARTY B Clean Energy Renewable Fuels, LLC
155 N. Sunnyside Avenue Clovis, CA 93611	ADDRESS	4675 MacArthur Court, Suite 800 Newport Beach, CA 92660
www.cityofclovis.com	BUSINESS WEBSITE	www.cleanenergyfuels.com
	CONTRACT NUMBER	CLS001
	D-U-N-S® NUMBER	
☐ US FEDERAL: _____ ☐ OTHER: _____	TAX ID NUMBERS	☒ US FEDERAL: 27-5411503 ☐ OTHER: _____
	JURISDICTION OF ORGANIZATION	Delaware
☐ Corporation ☐ Limited Partnership ☐ LLP	☐ LLC ☐ Partnership ☐ Other: _____	☐ Corporation ☒ LLC ☐ Limited Partnership ☐ Partnership ☐ Other: _____
COMPANY TYPE		
GUARANTOR (IF APPLICABLE)		
CONTACT INFORMATION		
City of Clovis ATTN: Paul Armendariz TEL#: (559) 324-2649 EMAIL: Paula@ci.clovis.ca.us	☒ COMMERCIAL	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Clovis ATTN: Paul Armendariz TEL#: (559) 324-2649 EMAIL: Paula@ci.clovis.ca.us	☒ SCHEDULING	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Clovis ATTN: Paul Armendariz TEL#: (559) 324-2649 EMAIL: Paula@ci.clovis.ca.us	☒ CONTRACT AND LEGAL NOTICES	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Clovis ATTN: Paul Armendariz TEL#: (559) 324-2649 EMAIL: Paula@ci.clovis.ca.us	☒ CREDIT	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
City of Clovis ATTN: Paul Armendariz TEL#: (559) 324-2649 EMAIL: Paula@ci.clovis.ca.us	☒ TRANSACTION CONFIRMATIONS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
ACCOUNTING INFORMATION		
City of Clovis ATTN: Paul Armendariz TEL#: (559) 324-2649 EMAIL: Paula@ci.clovis.ca.us	☒ INVOICES ☒ PAYMENTS ☒ SETTLEMENTS	Clean Energy Renewable Fuels, LLC ATTN: Jen Komonchak TEL#: (949) 437-1251 EMAIL: jen.komonchak@cleanenergyfuels.com
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
ATTN: <u>City of Clovis</u> ADDRESS: <u>155 N Sunnyside Avenue</u> <u>Clovis, CA 93611</u>	CHECKS (IF APPLICABLE)	ATTN: <u>Clean Energy Renewable Fuels, LLC</u> ADDRESS: <u>4675 MacArthur Ct, Suite 800</u> <u>Newport Beach, CA 92660</u>

Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

Section 1.2 Transaction Procedure ☐ Oral (default) OR ☒ Written	Section 10.2 Additional Events of Default ☒ No Additional Events of Default (default) ☐ Indebtedness Cross Default ☐ Party A: _____ ☐ Party B: _____ ☐ Transactional Cross Default <u>Specified Transactions:</u> _____ _____
Section 2.7 Confirm Deadline ☒ 2 Business Days after receipt (default) OR ☐ 5 Business Days after receipt	
Section 2.8 Confirming Party ☒ Seller (default) OR ☐ Buyer ☐ _____	
Section 3.2 Performance Obligation ☒ Cover Standard (default) OR ☐ Spot Price Standard	Section 10.3.1 Early Termination Damages ☒ Early Termination Damages Apply (default) OR ☐ Early Termination Damages Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding.	
Section 2.31 Spot Price Publication ☒ Gas Daily Midpoint (default) OR ☐ _____	Section 10.3.2 Other Agreement Setoffs ☒ Other Agreement Setoffs Apply (default) ☒ Bilateral (default) ☐ Triangular OR ☐ Other Agreement Setoffs Do Not Apply
Section 6 Taxes ☒ Buyer Pays At and After Delivery Point (default) OR ☐ Seller Pays Before and At Delivery Point	
Section 7.2 Payment Date ☒ 25 th Day of Month following Month of delivery (default) OR ☐ Day of Month following Month of delivery	Section 15.5 Choice Of Law <u>California</u>
Section 7.2 Method of Payment ☐ Wire transfer (default) ☐ Automated Clearinghouse Credit (ACH) ☒ Check	Section 15.10 Confidentiality ☒ Confidentiality applies (default) OR ☐ Confidentiality does not apply
Section 7.7 Netting ☒ Netting applies (default) OR ☐ Netting does not apply	
☒ Special Provisions Number of sheets attached: 8 ☒ Addendum(s): <u>Biogas Addendum</u>	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

City of Clovis	PARTY NAME	Clean Energy Renewable Fuels, LLC
By: _____	SIGNATURE	By: _____
John Holt	PRINTED NAME	Robert M. Vreeland
City Manager	TITLE	Chief Financial Officer

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending

party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Supper Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap

contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH

NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this

confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____	
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.		
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	
Contract Price: \$_____/MMBtu or _____		
Delivery Period: Begin: _____, ____ End: _____, ____		
Performance Obligation and Contract Quantity: (Select One)		
Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ☐ Buyer or ☐ Seller	Interruptible: Up to _____ MMBtus/day
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):		
Special Conditions: 		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated _____, 2022

by and between

City of Clovis ("Buyer")

and

Clean Energy Renewable Fuels, LLC ("CERF" or "Seller")

Section 1. Purpose & Procedures

In Section 1.2: (i) add the phrase "or other electronic means of communication" after "conversation" and before "with" in the second line; and (ii) insert "of communication" after "electronic means" in the sixth line.

Delete Section 1.3 and replace it with the following:

"1.3. If a sending Party's Transaction Confirmation is materially different from the receiving Party's understanding of the agreement referred to in Section 1.2, such receiving Party shall notify the sending Party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving Party has previously sent a Transaction Confirmation to the sending Party. The failure of the receiving Party to so notify the sending Party in writing by the Confirm Deadline constitutes the receiving Party's agreement to the terms of the transaction described in the sending Party's Transaction Confirmation. If there are material differences between timely sent Transaction Confirmations governing the same transaction, or if the receiving Party has timely objected to the terms of the sending Party's Transaction Confirmation, such transaction remains valid and the Parties remain legally bound thereby, however, both Parties shall in good faith attempt to resolve such differences. Once such material differences are resolved, the Confirming Party shall transmit a written Transaction Confirmation to the other Party, and such Transaction Confirmation shall be accepted (or disputed) pursuant to the provisions of this Section 1.3. The provisions of this Section 1.3 may be repeated as many times as necessary to produce a written Transaction Confirmation that is accepted or deemed accepted by the receiving Party. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the Parties (which may be evidenced by a recording of such transaction, oral testimony, data in a computer system, trade tickets, and/or notes), where the Parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the items shall govern in the priority listed in this sentence."

Add the following before the "." at the end of the second sentence in Section 1.4:

"; provided, further that the party responsible for obtaining the consent of its agents and employees to such recordings shall indemnify, defend and hold the other party harmless from any and all losses, liabilities, claims, damages, judgments, costs and expenses, including but not limited to reasonable attorneys' fees and costs of court, arising from or out of such party's failure to obtain the consent of its agents and employees to such recordings."

Section 2. Definitions

Definition of "Payment Date" in Section 2.27 shall be deleted and replaced with the following: "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due from one party to the other as set forth in Section 7."

Definition of "Spot Price" in Section 2.31 shall be amended by deleting the last sentence. "If no price or range of prices is published for such Day, then the Spot Price shall be determined in accordance with Section 14 as modified herein."

Add the following at the end of Section 2:

2.36 "Governmental Requirement(s)" shall mean any applicable laws, statutes, ordinances, orders, rules, regulations, rulings, decrees, or policies having the effect of law and/or official governmental actions, whether of a federal, state, local or tribal nature.

2.37 "New Taxes" shall mean any Taxes that (i) were not in effect on the date the transaction was entered into, or (ii) were not imposed by any taxing entity on a transaction on the date such transaction was entered into.

2.38 "Regulatory Event" shall mean a Governmental Requirement(s) (including but not limited to ones related to market rate caps (whether temporary or permanent), regulatory market requirements (such as those occurring under Dodd Frank), New Taxes, climate change assessments, environmental regulations, export/import assessments, etc.) promulgated after the date of a transaction, which renders a party (the "Affected Party") unable to continue to perform, either in whole or in part, because (i) such transaction is illegal or unenforceable, or (ii) the Government Requirement(s) materially changes the commercial and economic circumstances existing as of the date of the transaction and as a result negatively and significantly impacts the Affected Party's original economic expectations under the transaction.

2.39 "Taxes" shall mean any and all taxes, charges, licenses, levies, fees, penalties, permits, assessments, charges, or increases on any of the foregoing, (whether sales, use, gross receipts, excise, customs, duties or otherwise) which are claimed to be due by any federal, state, local or tribal government or any other governmental agency having jurisdiction to do so. The term "Taxes" shall not include any employment or franchise taxes imposed upon either party, nor any tax based upon a party's income or net worth."

Section 3. Performance Obligation

Add the following as Section 3.5:

"3.5 In the event that the Contract Price for a transaction is a Fixed Price (as defined below), and such transaction (a) has a Firm performance obligation, and (b) a Delivery Period of at least one Month, then, notwithstanding anything to the contrary in this Contract, including, without limitation, anything in Sections 3.2 or 11 of this Contract:

- (i) if, upon the occurrence of an event of Force Majeure, and as a result of the event of Force Majeure (a) Seller is unable to sell and deliver or (b) Buyer is unable to purchase and receive, the Contract Quantity of Fixed Price Gas, either in whole or in part, for such transaction,
- (ii) then, for the duration of the event of Force Majeure, for each Day that Seller is unable to sell and deliver, or Buyer is unable to purchase and receive, such Fixed Price Gas, as set out in Section 3.5(i) above, the following settlement obligations between the parties shall apply:
 - a. if the FOM Price (as defined below) exceeds the Fixed Price, Seller shall pay Buyer the difference between the FOM Price and the Fixed Price for each MMBtu of such Gas not delivered and/or received on that Day, or
 - b. if the Fixed Price exceeds the FOM Price, Buyer shall pay Seller the difference between the Fixed Price and the FOM Price for each MMBtu of such Gas not delivered and/or received on that Day.

For the purpose of this Section 3.5:

“Fixed Price” means, a Contract Price for a transaction that is expressed as a flat dollar amount for the Month of delivery, excluding any transactions that have been entered into after the last trading day (as defined by the NYMEX) for the applicable Month. Subject to the foregoing exclusion, “Fixed Price” also includes any transaction containing a Contract Price or a component of a Contract Price that has been converted from a floating price mechanism (i.e., a NYMEX/first of the month index basis component and a fixed price or floating price component, or a NYMEX/first of the month index priced component with a fixed basis component) to a flat dollar amount for the Month of delivery, either upon the mutual agreement of the parties or as a result of a party exercising a pricing “trigger” option in the Contract. For the purpose of clarity, the parties agree that all transactions providing for puts, calls, collars, swaptions, caps, and floors shall constitute transactions for a Fixed Price. “FOM Price” means the price per MMBtu, stated in the same currency as the transaction subject to such event of Force Majeure, for the first of the Month delivery, either as the NYMEX settlement price or as an index price published in the first issue of a publication commonly accepted by the natural gas industry (selected by the Seller in a commercially reasonable manner) for the Month of such event of Force Majeure for the geographic location closest in proximity to the Delivery Point(s) for the relevant Day, adjusted for the basis differential between the Delivery Point(s) and the NYMEX or such published geographic location as determined by the Seller in a commercially reasonable manner.”

Add the following as Section 3.6:

“3.6 If a Regulatory Event occurs and the Affected Party is unable, after using commercially reasonable efforts, to avoid the inability to perform or the negative and significant economic impacts, the Affected Party shall be entitled to terminate and liquidate the transaction(s) affected by such Regulatory Event (the “Affected Transaction(s)”), subject to the following conditions:

(i) The Affected Party must give the Non-Affected Party at least ten (10) Business Days’ prior Notice of its intent to terminate and liquidate the Affected Transaction(s). The Notice shall be the “Regulatory Event Notice to Terminate”, and shall specify the Early Termination Date, which shall be not more than twenty (20) Business Days after the date of the Regulatory Event Notice to Terminate. On the Early Termination Date, the Affected Party shall determine damages in accordance with Section 10 of the Contract; provided however, that any and all costs otherwise allowed under Section 10.3.1. shall be excluded from the calculation, and provided further that the Market Value for each terminated transaction shall be determined by using the mid-point, as it may be estimated, between the bid price and the ask price for each terminated transaction to reflect that neither party is the Defaulting Party and accordingly the intent of the parties is not to ascertain liquidated damages from a Non-Defaulting party’s perspective. The respective parties shall have the same rights and remedies related to the calculation and dispute of the resulting Net Settlement Amount(s) owed with respect to the termination and liquidation of the Terminated Transactions as those set forth in Section 10 of the Contract; and

(ii) Nothing herein shall prevent the other party from disputing whether the Affected Party has the right to terminate and liquidate the Affected Transaction(s).”

Add the following as Section 3.7:

“3.7 Provided further that the parties agree that with respect to any Gas delivered under a Transaction Confirmation, Gas shall be deemed delivered in the following order, (i) any Fixed Price Gas (as defined in Section 3.5) under such transaction; (ii) the Baseload Volume under such transaction; and (iii) any Swing Gas under such transaction.” To the extent that the terms “Baseload Quantity” or “Swing Gas” are applicable, such terms shall be defined in the relevant Transaction Confirmation.

Section 6. Taxes

Add “6.1” before “Seller” of “Buyer Pays At and After the Delivery Point:” in Section 6.

Add the following as new Sections 6.2 and 6.3 to “Buyer Pays At and After the Delivery Point:” of Section 6:

“6.2 Gross Receipts and Consumption, and Compensating Taxes. For clarity, the Contract Price does not include any applicable state or local, gross receipts, compensating, utility, transaction privilege, sales or use tax which may be assessed as a result of sales of or use of Gas hereunder, whether measured by quantity or revenues (“Gross Receipts” or “Compensating Tax”). If there is such a Gross Receipts and/or Compensating Tax, either of which being applicable to that quantity of Gas sold to or used by Buyer hereunder, Seller will invoice Buyer and Buyer will pay Seller the amount of the Gross Receipts or Compensating Tax and Seller will remit same as required by the applicable law.

6.3 Protest and Payment. If a party is required to remit or pay Taxes that are the other party’s responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes, except to the extent either party has filed, or provides prior notice to the other party that it will timely file, a good faith protest, contest, dispute or complaint with the taxing authority or applicable court with jurisdiction, which tolls the requirement to pay such Taxes. Any party is entitled to make such good faith protests, contests, disputes or complaints with the applicable

taxing authority or applicable court with jurisdiction or to file for a request for refund for such Taxes already paid in a timely manner as to any Taxes that it is responsible to pay or remit or for which it is responsible to pay or reimburse the other party. In the event either party makes such filings, the other party shall cooperate with such filing party by providing any relevant information within that party's possession, which will support the filing party's filing upon request by and as specified by the filing party. Upon the issuance by the taxing authority or court of a final, non-appealable order, which lifts the tolling of an obligation to pay and requires payment of the applicable Taxes, and absent a stay of such order, the responsible party shall either pay directly to the applicable taxing authority, or reimburse the other party for, such Taxes and any other amounts (including interest) required by such order. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof."

7. Billing, Payment and Audit

In Section 7.6, add the following at the end of the next to last sentence before the "":

"; provided, however, that the finality of all invoices and billings shall not apply to (i) Taxes, (ii) any adjustments made by Transporter(s) under the terms of its applicable tariff, or (iii) if applicable, payments related to Green Attributes such as but not limited to RINs or LCFS Credits and the responsible party under the Contract shall continue to be responsible for such amounts"

In Section 7.7 add the following after the words "subject to netting under this Section" at the end of the first sentence:

"and provided further, however, that the party due payment under Section 7.3 may net all undisputed sums due thereunder against any amounts payable by it when making payments under Section 7."

Section 8. Title, Warranty, and Indemnity

Delete Section 8.4 in its entirety.

Section 9. Notices

In the first sentence of Section 9.4 delete the words "commercially acceptable".

Section 10. Financial Responsibility

Section 10.2 shall be amended by (i) deleting the words "or its Guarantor" in the first line of such Section; (ii) deleting the word "or" before "(ix)" in such Section; and (iii) adding the following immediately after the ";" in subclause (ix) of such Section:

"(x) fail to perform or breach any other material obligation, representation or warranty under this Contract (except to the extent such failure constitutes a separate Event of Default, and except for such Party's obligations to deliver or receive Gas (the exclusive remedy for which is provided in Section 3) if such failure is not remedied within three (3) Business Days after receipt of written notice; or (xi) consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer (a) the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Contract to which it or its predecessor was a Party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, (b) the benefits of any credit support provided under this Contract as a result of a Credit Support Obligation fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder, or (c) the resulting entity's creditworthiness is materially weaker than that of such Party immediately prior to such action."

Add the following at the end before the "." in the last sentence of Section 10.2:

"provided that no suspension of performance shall continue for more than ten (10) Days unless an Early Termination Date has been declared and the Defaulting Party given Notice thereof in accordance with Section 10.3."

In Section 10.3.1:

- (i) Replace the words "(whether or not then due)" with the words "(whether or not yet invoiced or due)" in the second line;
- (ii) Insert the following: "(either firm or indicative)" after "physical gas trading markets" in the sixth line of the second paragraph of Section 10.3.1, and insert "any other information available to the Non-Defaulting Party, either internally or supplied to it by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data for the relevant markets", before "all adjusted for the length of term..." in the sixth line of the second paragraph of Section 10.3.1;
- (iii) Add the following provision at the end of the second paragraph:

"In determining the Early Termination Damages, damages shall be attributable only to Terminated Transactions for Firm Gas transactions. The parties understand and appreciate that utilizing good faith and commercially reasonable efforts, the Non-Defaulting Party should obtain quotes or other reliable third party information authorized under the terms of this Contract for the purposes of calculating the Net Settlement Amount(s), and that to the extent such information is received from such third parties such information is to be preferred and utilized over internal information and valuations.";
- (iv) Add the following as the third paragraph of Section 10.3.1. "Early Termination Damages Apply":

"The Non-Defaulting Party shall also aggregate the costs that the Non-Defaulting Party incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the cancellation and termination of each Terminated Transaction, including brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by the

Non-Defaulting Party including costs associated with hedging its obligations, transaction costs associated with obtaining replacement suppliers or markets (e.g. brokerage fees, or other such payments), additional transportation costs, and like costs incurred in moving the replacement Gas to or from the Delivery Point, and reasonable attorneys' fees and other reasonable litigation costs incurred in connection with enforcing its rights under this Contract (collectively "Costs") and such Costs shall be due to the Non-Defaulting Party."; and

- (v) Adding the following provision as the fourth paragraph:

"The purpose of calculating the Market Value with respect to a Terminated Transaction shall be the determination of the amount that would be incurred or realized by the Non-Defaulting Party to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction."

Delete the words "and without prior Notice to the Defaulting Party" in the second sentence of Section 10.3.2 "Other Agreements Setoffs Apply".

Add the following at the end of Section 10.3.2. "Other Agreements Setoffs Apply":

"The obligations of the Non-Defaulting Party, the Non-Defaulting Party's Affiliates, the Defaulting Party and the Defaulting Party's Affiliates under this Contract or otherwise in respect of such amounts shall be deemed satisfied and discharged to the extent of any such Setoff. For this purpose, the amounts subject to the Setoff may be converted at the applicable prevailing exchange rate into U.S. Dollars by the Non-Defaulting Party. The Non-Defaulting Party will give the Defaulting Party Notice of any Setoff effected under this section provided that failure to give such notice shall not affect the validity of the Setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest. The rights provided by this Section are in addition to and not in limitation of any other right or remedy (including any right to Setoff, counterclaim, or otherwise withhold payment) to which a party may be entitled (whether by operation of law, contract or otherwise). "Setoff" as used herein means setoff, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the Non-Defaulting Party is entitled or subject to (whether arising under this Contract, another contract, applicable law or otherwise) that is exercised by, or imposed on, the Non-Defaulting Party."

Section 10.4 is hereby amended by:

- (i) Deleting the second sentence and replacing it with the following:

"The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, and the reduction of such amount(s) by (a) the application of any margin, collateral or security by the Non-Defaulting Party against such Net Settlement Amount, or (b) any Setoffs allowed under the terms of this Contract (such adjusted amount after the exercise of rights under (a) or (b) being defined as the "Final Settlement Amount")";

- (ii) Adding the following sentence after the insert in (i) above:

"The Non-Defaulting Party's failure to give such Notice of the Net Settlement Amount/Final Settlement Amount calculations shall not affect the validity or enforceability of the liquidation and termination of the Terminated Transaction, or give rise to any claim by the Defaulting Party against the Non-Defaulting Party with respect to the Non-Defaulting Party becoming the Defaulting Party due to its failure to timely fulfill such obligation; however, such failure shall extend the start of the time period that the Defaulting Party may dispute the calculations as provided for in this Section 10.4. until such detailed Notice is appropriately given by the Non-Defaulting Party.";

- (iii) Replacing "second" in the sixth line with "fifth";

- (iv) Adding the following as Section 10.4.1.:

"10.4.1. Notwithstanding anything herein to the contrary, if the Non-Defaulting Party owes the Net Settlement Amount/Final Settlement Amount to the Defaulting Party, the Non-Defaulting Party shall not be required to pay to the Defaulting Party the Net Settlement Amount/Final Settlement Amount, nor shall interest be owed on such amount, until (i) the Non-Defaulting Party receives confirmation satisfactory to it, in its reasonable discretion, that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Contract and transactions hereunder, or under any other agreements between the parties, which are due and payable, have been paid (or netted, Setoff, recouped, or the like) in full; and (ii) the Defaulting Party executes a release in a form satisfactory to the Non-Defaulting Party that acts as the final resolution of the amounts due and owing as the Net Settlement Amount/Final Settlement Amount under the terms of this Contract and transactions hereunder. To the extent that either party believes that bankruptcy court approval of the release is required, the Non-Defaulting Party may withhold payment of the Net Settlement Amount/Final Settlement Amount until such time as appropriate court approval has been obtained and is final and non-appealable."; and

- (v) Adding the following as Section 10.4.2.:

"10.4.2. Notwithstanding anything set forth in the Contract, nothing shall in any manner preclude the Defaulting Party from disputing the Non-Defaulting Party's calculation of the Net Settlement Amount or the Final Settlement Amount. In the event the Defaulting Party disputes the calculation of the Net Settlement Amount/Final Settlement Amount, such

party shall notify the other Non-Defaulting Party of such dispute within five (5) Business Days of the date the Non-Defaulting Party provides the Notice required under this Section 10.4 to the Defaulting Party; provided, further that as soon as commercially reasonable thereafter, the Defaulting Party shall provide a statement showing its calculation of the Net Settlement Amount/Final Settlement Amount. In the event of a dispute as to the Net Settlement Amount/Final Settlement Amount, the Defaulting Party shall, if applicable, within the time prescribed in Section 10.4, pay the undisputed amount of the Net Settlement Amount/Final Settlement Amount to the Non-Defaulting Party. If the parties have not been able to resolve their dispute within five (5) Business Days of receipt of Notice of such dispute, the parties shall be entitled to pursue their respective rights and remedies in a court of competent jurisdiction. During the five (5) Business Day period, the parties shall exchange, in addition to the detailed information otherwise required under the Contract supporting their initial Net Settlement Amount/Final Settlement Amount calculations, such other information, including quotations, that such party is utilizing to justify its position. Each party shall submit its detailed calculation of the Net Settlement Amount/Final Settlement Amount, as the same may be revised by the parties after the exchange of the information required hereunder.”

Delete Section 10.5 in its entirety and replace with the following:

“10.5 “Each party further represents and warrants to the other party that (i) this Base Contract and all transaction(s) governed by the Base Contract constitute “forward contracts” and/or “swap agreements” within the meaning of the United States Bankruptcy Code (the “Code”); (ii) it is a “forward contract merchant” within the meaning of the Code with respect to any transactions that constitute “forward contracts”; (iii) it is a “swap participant” within the meaning of the Code with respect to any transactions that constitute “swap agreements”; (iv) the Contract is a “master netting agreement for purposes of the Code; (v) it is a “master netting agreement participant” for purposes of the Code; (vi) all payments made or to be made on its behalf pursuant to the Contract, including the application by a party of any collateral or security to any amounts due and owing to such party, constitute “settlement payments” within the meaning of the Code; (vii) all transfers of collateral or security by it or on its behalf under the Contract constitute “margin payments” within the meaning of the Code; and (viii) its rights under Section 10, “Financial Responsibility”, of the Contract constitute a “contractual right to liquidate, terminate or accelerate” or “contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts” the transactions within the meaning of the Code. Each party further agrees that the other party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such party. In addition, each party agrees that, for any Gas actually consumed (rather than resold) by such party, if Gas is not delivered pursuant to this Contract, the local gas distribution utility for such party is the provider of last resort and can supply such party’s Gas consumption needs.”

Section 11. Force Majeure

In Section 11.2:

- (i) Delete the “and” in front of “(v)”;
- (ii) Insert the following before the period at the end of the first sentence: “and (vi) the occurrence of a Regulatory Event. If a party declares an event of Force Majeure based upon the event described in (vi), the event of Force Majeure shall terminate upon the earlier to occur of (a) the time the declaring party provides Notice that there is no longer an event of Force Majeure; (b) the time a party liquidates and terminates the Affected Transaction(s) on the Early Termination Date in accordance with Section 3.6, or (c) the expiration of twenty (20) Business Days after the claiming party provides Notice of the event of Force Majeure, unless a Regulatory Event Notice to Terminate has been provided in accordance with Section 3.6.”; and

Add the following as Section 11.7:

“11.7 Without restricting the generality of the foregoing, if an event of Force Majeure occurs, the party affected may, in its sole discretion and without notice to the other party, determine not to make a claim of Force Majeure and to waive its rights hereunder as they would apply to such event. Such determination or waiver shall not preclude the affected party from claiming Force Majeure in respect of any subsequent event, including any event that is substantially similar to the event in respect of which such determination or waiver is made.”

Add the following as Section 11.8:

“11.8 If an event of Force Majeure impairs or prevents Seller from delivering or Buyer from purchasing Gas under this Contract and such event of Force Majeure continues (i) for a continuous period of time greater than ninety (90) Days or (ii) for more than one hundred and eighty (180) cumulative Days during any calendar year, the party not claiming the event of Force Majeure may terminate and liquidate the transactions affected by such event of Force Majeure utilizing the same methodology (including rights and remedies) set forth under Section 3.6 for terminating and liquidating Affected Transactions with respect to Regulatory Events. ”

Section 12. Term

Delete the second sentence and replace it with the following:

“The rights of either party pursuant to: (i) Section 7, (ii) Section 10, (iii) Section 13, (iv) Section 14, (v) Section 15, (vi) the obligations to make payment hereunder, and (vii) the obligation of either party to indemnify the other pursuant hereto, shall survive the termination of the Base Contract or any transaction.”

Section 14. Market Disruption

Delete Section 14. and replace it with the following:

“If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second

Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party attempting to obtain, in good faith and from non-affiliated market participants in the relevant market, at least four quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains four or more quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains four or more quotes and the other party obtains less than four, the highest and lowest values of all obtained quotes shall be excluded and the arithmetic mean of the remaining quotations shall be utilized; or (iii) if both parties obtain less than four quotes, the parties shall resort to the negotiation process set out in Section 15.16 to resolve the dispute with the quotes being only indicative of an illiquid market which shall allow both parties to utilize other industry information, including internal valuations to resolve the dispute. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged."

Section 15. Miscellaneous

Delete Section 15.3 in its entirety and replace with the following:

"15.3 No waiver of any breach of this Contract, or delay, failure or refusal to exercise or enforce any rights under this Contract, shall be held to be a waiver of any other or subsequent breach, or be construed as a waiver of any such right then existing or arising in the future."

In second line of Section 15.10, add the following:

"or any financial information provided by a party under the terms of this Contract" after "the terms of any transaction".

Add the following as Section 15.13:

"15.13 EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS CONTRACT OR THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS ARISING UNDER OR IN CONNECTION WITH THIS CONTRACT."

Add the following as Section 15.14:

"15.14 This Contract shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed."

Add the following as Section 15.15:

"15.15 Each party will be deemed to represent to the other party each time a transaction is entered into that: (i) it is acting for its own account, and it has made its own independent decisions to enter that transaction and as to whether that transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (ii) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that transaction; it being understood that information and explanations related to the terms and conditions of a transaction shall not be considered investment advice or a recommendation to enter into that transaction; (iii) no communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that transaction; (iv) it is capable of assessing the merits (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that transaction; (v) it is capable of assuming, and assumes, the risks of that transaction; and (vi) the other party is not acting as a fiduciary for, or an advisor to, it in respect of that transaction."

Add the following as Section 15.16:

"15.16 Where the negotiation process is specifically prescribed to resolve a dispute under this Contract, the parties shall seek to resolve the dispute by negotiations between senior executives who have authority to settle the controversy. Either party may initiate this negotiation process by written Notice to the other party outlining that party's position regarding the dispute ("Negotiation Notice"). The senior executives shall meet at a mutually acceptable time and place within fifteen (15) Business Days after the date of the Negotiation Notice to exchange relevant information concerning the dispute and to attempt to resolve the dispute. If a senior executive intends to be accompanied at a meeting by an attorney, the other party's senior executive shall be given at least three Business Days' Notice of such intention and may also be accompanied by an attorney. All negotiations are confidential and shall be treated as compromise and settlement negotiations under the Federal Rules of Evidence or any similar applicable rules of evidence. If the parties are unable to resolve the dispute after the meeting, either party may pursue its rights and remedies in a court of competent jurisdiction."

Add the following as Section 15.17:

"15.17 WAIVER OF RIGHTS: SELLER AND BUYER (A) CERTIFY THAT THEY ARE NOT "CONSUMERS" WITHIN THE MEANING OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SUBCHAPTER E OF CHAPTER 17, SECTIONS 17.41 ET SEQ., AS AMENDED (THE "DTPA"), A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS, AND (B) EACH WAIVES ITS RIGHTS UNDER THE DTPA. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, EACH PARTY VOLUNTARILY CONSENTS TO THIS WAIVER. BY THIS PROVISION, EACH PARTY

INTENDS TO WAIVE ANY RIGHT TO SUE UNDER THE DTPA FOR ANY CLAIM ARISING FROM OR RELATING IN ANY WAY TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO THE NEGOTIATION, PERFORMANCE OR BREACH OF THE CONTRACT. THIS WAIVER IS IN ADDITION TO ANY OTHER DEFENSE THAT EITHER PARTY MAY HAVE TO A DTPA CLAIM, INCLUDING BUT NOT LIMITED TO A DEFENSE THAT THE PARTIES ARE NOT "CONSUMERS" WITHIN THE MEANING OF THE STATUTE OR THAT THE CLAIM IS SUBJECT TO THE EXEMPTIONS ENUMERATED IN THE STATUTE."

[Signature page follows]

CLEAN ENERGY RENEWABLE FUELS, LLC

CITY OF CLOVIS

By: _____

Name: Robert M. Vreeland

Title: Chief Financial Officer

By: _____

Name: John Holt

Title: City Manager

[NAESB Special Provisions]

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

	Date: _____, 2022 Transaction Confirmation #: CLS001-TC02			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding upon execution by the parties.				
SELLER: City of Clovis Attn: Paul Armendariz Phone: 559-324-2649	BUYER: Clean Energy Renewable Fuels, LLC Attn: Jen Komonchak Phone: 949-437-1251 Base Contract No. CLS001			
Contract Price: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"> Contract Price (\$/MMBtu) The “Contract Price” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i>, first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”. </td> </tr> </table>		Contract Price (\$/MMBtu) The “ Contract Price ” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i> , first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”.		
Contract Price (\$/MMBtu) The “ Contract Price ” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i> , first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”.				
Delivery Period: The Delivery Period shall commence on the first (1 st) day of the Delivery Period of Transaction Confirmation # CLS001-TC01, between the parties and dated _____, and shall end on the last day of the Delivery Period of Transaction Confirmation # CLS001-TC01, by and between Buyer and Seller.				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): 0 MMBtus/day Minimum 100 MMBtus/day Maximum </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day. </td> </tr> </table> <u>Performance Obligation:</u> During every month of the Delivery Period of this Transaction Confirmation, Buyer will purchase, and Seller will be obligated to sell, Gas in identical corresponding volumes to Seller’s purchases of Biogas (as defined in Transaction Confirmation # CLS001-TC01) from Buyer under Transaction Confirmation # CLS001-TC01 during such month.		Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): 0 MMBtus/day Minimum 100 MMBtus/day Maximum	Interruptible: Up to _____ MMBtus/day.
Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): 0 MMBtus/day Minimum 100 MMBtus/day Maximum	Interruptible: Up to _____ MMBtus/day.		
Delivery Point: The Delivery Point shall be Seller’s Pacific Gas and Electric Company (“ PG&E ”) meter interconnect at Seller’s California compressed natural gas (“ CNG ”) station listed in <u>Exhibit A</u> , which is attached				

hereto and incorporated herein by reference, at which point title to the Gas sold by Seller to Buyer. Transaction Confirmation will transfer from Seller to Buyer.

Special Conditions:

1. Hierarchy and Governing Law. In the event of any inconsistency between the Base Contract and this Transaction Confirmation, this Transaction Confirmation shall govern.

Seller: **City of Clovis**

By: _____

Name: John Holt

Title: City Manager

Date: _____

Buyer: **Clean Energy Renewable Fuels, LLC**

By: _____

Name: Robert M. Vreeland

Title: Chief Financial Officer

Date: _____

Exhibit A

CNG Station Location		
Street Address	City and State	Local Distribution Channel
155 North Sunnyside Avenue	Clovis, CA	PG&E

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

	Date: _____, 2022 Transaction Confirmation #: CLS001-TC01			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding upon execution by the parties.				
SELLER: Clean Energy Renewable Fuels, LLC Attn: Jen Komonchak Phone: 949-437-1251 Base Contract No. CLS001	BUYER: City of Clovis Attn: Paul Armendariz Phone: 559-324-2649			
Contract Price: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Contract Price (\$/MMBtu)</td> </tr> <tr> <td style="padding: 10px;"> The “Contract Price” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i>, first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”. </td> </tr> </table>		Contract Price (\$/MMBtu)	The “ Contract Price ” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i> , first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”.	
Contract Price (\$/MMBtu)				
The “ Contract Price ” (per MMBtu) means the First of the Month Index Price for Monthly Deliveries at the Delivery Point as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i> , first of month publication, under the table “Market Center Spot Prices”, for the delivery Month under the column “Index”, under the table “South Louisiana”, in the row labeled “Henry Hub”.				
Delivery Period: The Delivery Period shall begin on the Start Date and end on the five-year (5) anniversary of the Start Date. The “ Start Date ” shall be (a) within forty-five (45) days following the day this Transaction Confirmation is executed by Seller and Buyer, and (b) reasonably determined by Seller and stated in a written notice (email to suffice) provided by Seller to Buyer at least five (5) days in advance.				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): 0 MMBtus/day Minimum 100 MMBtus/day Maximum (“Max Daily Quantity”) </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day. </td> </tr> </table> <u>Performance Obligation:</u> During each month of the Delivery Period of this Transaction Confirmation, Seller will deliver to Buyer, and Buyer will purchase, Biogas in identical corresponding volumes to Seller’s purchases of Conventional Gas (as defined below) from Buyer under Transaction Confirmation # CLS001-TC02 (between the parties and dated _____) during such month. The Variable Quantity shall be made up of Biogas. Buyer acknowledges that the delivered quantities of Biogas will		Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): 0 MMBtus/day Minimum 100 MMBtus/day Maximum (“ Max Daily Quantity ”)	Interruptible: Up to _____ MMBtus/day.
Firm (Fixed Quantity): _____ MMBtus/day ☐ EFP	Firm (Variable Quantity): 0 MMBtus/day Minimum 100 MMBtus/day Maximum (“ Max Daily Quantity ”)	Interruptible: Up to _____ MMBtus/day.		

fluctuate and agrees to receive all Biogas, up to the Max Daily Quantity. Seller shall be the exclusive provider of Biogas to Buyer at the Delivery Point during the Delivery Period.

Subject to the terms of this Transaction Confirmation and the Max Daily Quantity described above, during each consecutive six (6) month period beginning on the first day of the Delivery Period and ending on the last day of the Delivery Period, and as long as such six (6) month period does not contain a Missed Month (as defined below), Seller shall use reasonable efforts to provide an amount of Biogas to the Delivery Point which is equal to one-hundred percent (100%) of Buyer's Gas Quantity (as defined below) for the applicable rolling six (6) month period (the "**Minimum Commitment**"). "**Buyer's Gas Quantity**" means the total amount of natural gas provided to the Station (as defined below) based on the invoices (which are related to the Delivery Point and the applicable rolling six (6) month) Buyer receives from the natural gas utility (and provides to Seller pursuant to Section 2(a) below) but limited to such portion of the gas which is deemed to have been actually consumed as a Vehicle Fuel (as determined in accordance with Seller's LCFS and RFS compliance protocol).

Beginning on the one (1) year anniversary of the first day of the Delivery Period, Buyer may, as its sole and exclusive remedy for any failure by Seller to comply with the Minimum Commitment described above, terminate this Transaction Confirmation upon written notice, with the termination date determined as described in the following sentence, in the event that over any consecutive six (6) month period, as long as such six (6) month period does not contain a Missed Month, the total volume of Biogas sold by Seller to Buyer hereunder is less than the lesser of: (a) one-hundred percent (100%) of Buyer's Gas Quantity during such six (6) month period; and (b) the Max Daily Quantity, referenced above, multiplied by the number of days in the applicable six (6) month period. The termination date will be the first day after the end of the LCFS reporting calendar quarter in which the written termination notice was received by Seller. Seller will provide a written notice to Buyer which indicates the termination date.

Delivery Point: The Delivery Point shall be Buyer's Pacific Gas and Electric Company ("**PG&E**") meter interconnect at Buyer's California compressed natural gas ("**CNG**") station listed in Exhibit A ("**Station**"), which is attached hereto and incorporated herein by reference.

Definitions:

"**Advanced Biofuel**" means a renewable fuel as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)), other than ethanol derived from corn starch, and which must achieve a Lifecycle Greenhouse Gas Emission displacement of fifty percent (50%) compared to the baseline Lifecycle Greenhouse Gas Emissions.

"**Alternative Fuel**" means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including but not limited to, those fuels specified in the California Low Carbon Fuel Standard (Cal. Code Regs. tit. 17, § 95480.1(a)(12) (2010)).

"**Brown Gas LCFS Credits**" means LCFS Credits which are generated by Seller when Conventional Gas is dispensed from the Station as a Brown Gas Vehicle Fuel.

"**Brown Gas Vehicle Fuel**" means CNG derived from Conventional Gas and used in transportation vehicles.

"**Biogas**" or "**RNG**" means pipeline quality Gas derived from the decomposition of organic matter that meets the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel.

"**CARB**" means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010).), (collectively, the "**LCFS**") applying to any transportation fuel that is sold, supplied, or offered for sale in California.

“Cellulosic Biofuel” means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that results in lifecycle greenhouse gas emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012))).

“CI” or “Carbon Intensity” means the quantity of life cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO₂e/ML) as defined in the LCFS (as amended or replaced with a subsequent program).

“Conventional Gas” means Gas other than Biogas.

“Disqualified Biogas” means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas by not satisfying the requirements of the EPA Renewable Fuels Standard or the CARB LCFS.

“EPA” means the United States Environmental Protection Agency.

“EPA Renewable Fuels Standard” or “EPA RFS” means the renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010.

“First Fuel Reporting Entity” means the first entity responsible for reporting in the LRT-CBTS (LCFS reporting tool-credit and banking transfer system) for a given amount of fuel. This is the entity that initially holds the status as the fuel reporting entity and the credit or deficit generator but may transfer either status pursuant to sections 95483 or 95483.1.

“Green Attributes” means any and all attributes, including Lifecycle Greenhouse Gas Emissions, associated with the production, sale and use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as necessary to generate or claim applicable CARB LCFS Credits and EPA RINs.

“Greenhouse Gas” means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as Greenhouse Gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric tonne of carbon dioxide equivalent.

“Governmental Authority” means any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority. Governmental Authority includes, without limitation, the EPA, CARB and the California Public Utilities Commission or its successor agency.

“Incremental LCFS Credits” means the number of LCFS Credits generated from the use of Biogas Vehicle Fuel that exceed the number of LCFS Credits (if any) that would have been generated using the lesser of: (a) the CI of the default CNG pathway used for Conventional Gas; or (b) the compliance curve set by CARB: “Benchmarks for Diesel Fuel and Fuels used as a Substitute for Diesel Fuel” (as defined from time to time in Title 17 of the California Code of Regulations for the Low Carbon Fuel Standard).

“Lifecycle Greenhouse Gas Emissions” means the aggregate quantity of Greenhouse Gas emissions (including direct emissions and significant indirect emissions from land use changes), as determined by the EPA RFS or CARB, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

“LCFS Account” means an account containing an entity’s LCFS Credits, established and maintained with the LCFS.

“Low Carbon Fuel Standard Credits” or **“LCFS Credits”** shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO2 emissions under the Low Carbon Fuel Standard.

“LCFS Credits Resale Price” shall be calculated by reference to the volume weighted average price of all LCFS Credits of the same annual and quarterly vintage realized by Seller within the same calendar quarter.

“LRT” means the reporting tool established in accordance with LCFS and required by CARB to submit annual compliance and quarterly progress reports and track LCFS Credits.

“Renewable Identification Number” or **“RIN”** is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012).).

“RIN Resale Price” shall be calculated by reference to the volume weighted average price of all RINs which is realized by Seller that were generated within the same calendar month.

“Vehicle Fuel” means CNG or liquefied natural gas (LNG) derived from Gas and used in transportation vehicles.

Special Conditions:

1. Representations.

(a) Buyer represents that it shall process all Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed as Vehicle Fuel through Buyer’s Station.

(b) When applicable, Buyer represents that it is not aware of any reason that would cause the Brown Gas LCFS Credits not to comply with the LCFS.

2. Records and Documentation Related to Biogas and RIN and LCFS Credits Creation.

(a) Buyer shall provide Seller with a copy of its natural gas invoices related to the Delivery Point for the prior month (when such prior month is during the term of this Transaction Confirmation) between the 10th and 20th day of each month.

Notwithstanding anything to the contrary in this Transaction Confirmation, including without limitation, the terms in the “Performance Obligation and Contract Quantity” Section above, in the event Seller does not receive the invoice within the time period identified above, Seller shall: (1) not have any obligation to Buyer to make any payment to Buyer (including, without limitation, the Seller’s Payment) which relates to the month in which it did not receive a corresponding natural gas invoice (the **“Missed Month”**); (2) not have any obligation to supply Biogas during the Missed Month, and therefore, shall not generate any credits (neither RINs nor LCFS Credits); and (3) treat such Missed Month as if Seller, sold and Buyer, purchased 0 MMBtus of Biogas during such month and such treatment shall not be considered a breach of any of the obligations of Seller pursuant to this Transaction Confirmation. In the event there are three (3) consecutive Missed Months, Seller may terminate this Transaction Confirmation, based on Buyer’s default, upon a written notice to Buyer which shall specify the effective date of termination.

This obligation to provide the relevant invoice(s) shall survive the termination or expiration of this Transaction Confirmation until the last day of the full calendar month following the month in which this Transaction Confirmation expired or terminated. Buyer shall maintain all records relevant to the purchase of Biogas from Seller

and use of such Biogas as a Vehicle Fuel in accordance with the requirements of the CARB for of LCFS Credits.

(b) Seller shall maintain records relevant to the production and purchase and sale of Biogas and transportation and distribution of the Biogas purchased hereunder as a Vehicle Fuel as it applies to the creation and sale of LCFS Credits in accordance with the requirements of CARB.

(c) Buyer shall provide reasonable cooperation to Seller with respect to the requirements for the generation of RINS under the EPA RFS including, without limitation, by signing periodic attestations regarding the use of the Biogas sold hereunder as a Vehicle Fuel. Further, on at least a quarterly basis, and at any other time requested by Seller, Buyer shall provide Seller with attestations executed by an authorized officer of Buyer which indicate that the volume of Conventional Gas and Biogas (as applicable) delivered to the Station is consumed as a Vehicle Fuel. Buyer shall provide Seller with such attestations no later than thirty (30) days after Seller's written request.

3. Hierarchy and Governing Law.

In the event of any inconsistency between the Base Contract and this Transaction Confirmation, this Transaction Confirmation shall govern. The law governing the Base Contract shall apply to this Transaction Confirmation, except to the extent that the EPA RFS and CARB Low Carbon Fuels Standard, together with regulations and decisions promulgated thereunder, are applicable to the purchase and sale of Biogas.

4. CARB LCFS Fuel Reporting Entity Status.

Pursuant to the California Code of Regulations for the Low Carbon Fuel Standard, Seller will retain the Low Carbon Fuel Standard (LCFS) First Fuel Reporting Entity status as set forth in Title 17, California Code of Regulations in § 95483 with respect to all Biogas sold by Seller to Buyer hereunder (the "Purchased Biogas").

Buyer will elect to not be the First Fuel Reporting Entity for Conventional Gas (referred to as "Fossil CNG" in the California Code of Regulations in §§ 95483) as set forth in Title 17, California Code of Regulations in § 95483, and designates Seller as the First Fuel Reporting Entity for Conventional Gas under the California Air Resources Board as set forth in Title 17, California Code of Regulations § 95480.3 with respect to all Conventional Gas purchased by Buyer at the Delivery Point during the Delivery Period (the "Purchased Conventional Gas").

Buyer and Seller agree that: (A) for Conventional Gas, the original First Fuel Reporting Entity (Buyer) per subsections (1)(A) through (1)(E) will not generate credits or deficits in the LCFS and will instead provide the amount of fuel dispensed, and other required information pursuant to sections 95483.2(b)(8), 95491 and 95491.1, to the contractually designated entity (Seller) for the purpose of LCFS reporting and credit or deficit generation; and (B) the contractually designated entity (Seller) accepts all LCFS responsibilities as the First Fuel Reporting Entity for Conventional Gas and as a credit or deficit generator, as applicable.

Any deficits generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas shall be deemed to be Buyer's sole financial responsibility; and therefore, in the event any deficits are generated based on Seller's status as the First Fuel Reporting Entity for the Purchased Biogas or the Purchased Conventional Gas, notwithstanding anything to the contrary in this Transaction Confirmation or the Base Contract, Seller may: (1) offset any deficits with Incremental LCFS Credits or other LCFS Credits generated by Seller based on the Purchased Biogas and Purchased Conventional Gas (if any), a portion or all of which would have paid to Buyer pursuant to the Seller's Payment; and/or (2) purchase LCFS Credits equal to the deficit with Buyer being financial responsible (Seller will invoice Buyer) for all costs incurred by Seller to purchase such LCFS Credits (including, without limitation, the price per LCFS Credit paid by Seller to the applicable third party credit seller multiplied by the number of LCFS Credits that need to be purchased to satisfy the deficit); and/or (3) invoice Buyer for all amounts (including, without limitation, any attorney's fees or broker fees) Seller incurred based on such deficit(s). Buyer shall remit payment to Seller within fifteen (15) days of its receipt of a Seller invoice pursuant to this Section. Buyer shall be deemed to have received an invoice from Seller three (3) days after the invoice is sent to Buyer.

5. LCFS Credit and RIN Sales.

(a) Seller shall remit payments to Buyer as described in this Transaction Confirmation and **Exhibit B**, Payment Schedule.

(b) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own LCFS Credits and/or as an agent with respect to LCFS Credits generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the LCFS Credits generated and/or sold hereunder. Seller and /or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the LCFS Credits generated and sold. Seller and its affiliate's sole obligation with respect to the sale of LCFS Credits generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other LCFS Credits that Seller and/or its affiliates may market or sell based on the calendar quarter in which such credits are generated.

(c) Buyer acknowledges that Seller and/or its affiliates will act as a principal with respect to their own RINs and/or as an agent with respect to RINs generated and/or sold hereunder and Buyer hereby waives any claim against Seller and/or its affiliates based on any conflict of interest or alleged conflict of interest of Seller and/or its affiliates with respect to the manner, price or terms of the sale of any of the RINs generated and/or sold hereunder. Seller and /or its affiliates and control persons shall owe no fiduciary obligation to Buyer with respect to the RINs generated and sold. Seller and its affiliate's sole obligation with respect to the sale of RINs generated and/or sold in this transaction shall be to use commercially reasonable efforts to sell such credits alongside other RINs that Seller and/or its affiliates may market or sell based on the calendar month in which such credits are generated.

6. Consultant Support.

Buyer and Seller shall work with Seller's consultant and/or RIN quality assurance plan (QAP) provider to ensure that it has created documentation necessary for Biogas and RIN creation in compliance with EPA requirements and LCFS Credit creation in compliance with CARB requirements.

7. Regulatory Hinderance.

In the event that: (a) the RFS and/or LCFS are materially modified, repealed, stayed, enjoined, or end prior to the end of the Delivery Period; or (b) a regulatory change (1) makes the sale of the Biogas and conversion thereto into vehicle fuel and the coincident generation of RINs and/or LCFS Credits illegal or impossible, or (2) hinders Seller's performance of its obligations under this Transaction Confirmation; (each event shall be referred to as a "**Regulatory Hinderance**"), then Buyer and Seller shall work together to renegotiate the affected terms of this Transaction Confirmation. If Buyer and Seller do not agree on an amendment to the Transaction Confirmation within sixty (60) days from the date the Seller initiated renegotiation, then either Buyer or Seller shall have the right to terminate the Transaction Confirmation. In the event of termination, the process described in Section 10.3 of the Base Contract shall be followed except that (y) references therein to the "Defaulting Party" and to the "Non-Defaulting Party" will be deemed references to Buyer and to Seller, respectively, and (z) no early termination damages will apply to the termination, and therefore, the process described in "Early Termination Damages Do Not Apply" in Section 10.3.1 of the Base Contract shall be followed. As used herein, "**Biogas Supply Source**" means a third party who sells Biogas to Seller which Seller sells to Buyer hereunder.

8. Environmental Attributes and Alternative Fuel Credit

Buyer is not entitled to any RINS, LCFS Credits generated from Biogas provided under this Transaction Confirmation, or other environmental attributes that may be attributed to or generated from the Biogas delivered under this Transaction Confirmation other than as specifically stated herein. Seller's retention and/or sale of RINS and/or LCFS Credits generated from the Biogas delivered under this Transaction Confirmation shall not limit Buyer's ability to report the purchase of Biogas and applicable reductions in greenhouse gases or emissions directly

associated with the use of Biogas in its transportation fleet. Seller represents and warrants that n entitled to claim the reductions in greenhouse gases or emissions directly associated with the use of the Biogas provided hereunder as a transportation fuel other than Buyer.

As between the parties, to the extent available, Buyer shall be solely entitled to claim 100% of the federal Alternative Fuel Credit (defined below) revenue as allowed or may be allowed under Sections 6426 and 6427 of the Internal Revenue Code of 1986 (“Alternative Fuel Credit”), as may be amended, for each gasoline gallon equivalent of Conventional Gas or Biogas dispensed from the Station. The parties agree that Buyer will be considered the “Alternative Fueler” as defined in Proposed Treasury Regulation Section 48-6426-1 and is responsible for remitting any federal or state fuel taxes, if any, imposed on the subsequent sale or use of such fuel.

9. Adjustment for Disqualified Biogas

In addition to other remedies available under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas becomes classified as Disqualified Biogas and such disqualification did not occur based on an act or omission of Seller, Seller will be entitled to a refund of any payment made to Buyer which is related to such Gas. This obligation shall survive the termination or expiration of this Transaction Confirmation.

10. Failure to Produce Vehicle Fuel

In addition to all other remedies under the Base Contract and hereunder, if Gas sold by Seller and purchased by Buyer hereunder originally deemed to be Biogas is not processed into a Vehicle Fuel, Seller will be entitled to a refund of any payment made to Buyer for the volume of Biogas that was not processed into a Vehicle Fuel. Further, if any Purchased Conventional Gas is not processed into a Vehicle Fuel, Seller will be entitled to a refund of any payment made to Buyer which relates to the volume of Purchased Conventional Gas that was not processed into a Vehicle Fuel. This obligation shall survive the termination or expiration of this Transaction Confirmation.

11. Further Assurances

Each party will provide the other party such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Transaction Confirmation (including pursuant to any audit of this Transaction Confirmation by a Governmental Authority) and in order for title to the conveyed Green Attributes to vest in the Seller in connection with the purchase and sale of the Contract Quantity of Biogas.

12. AB 32

Effective January 2015, transportation fuel suppliers in California are subject to the Cap and Trade regulations under AB 32. AB 32 requires fuel suppliers to purchase compliance instruments if the total amount of greenhouse gas (GHG) emissions from fuel they supply in California exceeds 25,000 MTC02e per year. Seller will pass through any applicable AB 32 compliance costs for non-exempt gas purchased hereunder to Buyer.

Seller: **Clean Energy Renewable Fuels, LLC**
By: _____

Name: Robert M. Vreeland

Title: Chief Financial Officer

Date: _____

Buyer: **City of Clovis**
By: _____

Name: John Holt

Title: City Manager

Date: _____

EXHIBIT A

CNG Station Location		
Street Address	City and State	Local Distribution Channel
155 North Sunnyside Avenue	Clovis, CA	PG&E

EXHIBIT B

Payment Schedule

Calendar Year	RNG MMBtu	CI Number Used by Seller to Determine Payment to Buyer. (This CI Number is allocated at the gas meter for the determination of payment to Buyer regardless of the actual CI of the RNG supplied.)	LCFS Diesel Compliance Curve CI	Number of LCFS Credits generated per MMBtu of Conventional Gas ("Brown Gas Credit Generation Rate")	Number of Incremental LCFS Credits generated per RNG MMBtu based on corresponding CI number (as shown in this table) for such RNG ("LCFS Credit Generation Rate")	Buyer Percentage of LCFS Credit Generation Rate	Number of RINs generated per RNG MMBtu ("RIN Generation Rate")	Buyer Percentage of RIN Credit Generation Rate
2022	1	48.00	90.41	0.00205680	0.02973267	60%	11.727	10%
2023	1	48.00	89.15	0.00097648	0.02973267	60%	11.727	10%
2024	1	48.00	87.89	0.00000000	0.02962883	60%	11.727	10%
2025	1	48.00	86.64	0.00000000	0.02855709	60%	11.727	10%
2026	1	48.00	85.38	0.00000000	0.02747676	60%	11.727	10%
2027	1	48.00	84.13	0.00000000	0.02640502	60%	11.727	10%

Terms and Conditions:

- (1) Within thirty (30) days of Seller's receipt of payment for all RINs generated during the prior month, Seller will pay Buyer the **"RIN Payment"** which is described below:

$$[[\text{applicable Calendar Year Buyer Percentage of RIN Credit Generation Rate as shown in the table above}] \times (11.727 \times [(\text{cumulative Gas MMBtus dispensed from the Station (as determined in accordance with Seller's LCFS and RFS compliance protocol) during the applicable calendar month where such month is within the Delivery Period})] \times [\text{RIN Resale Price}])]$$
- (2) Within thirty (30) days of Seller's receipt of payment for all LCFS Credits generated during the prior calendar quarter, Seller will pay Buyer the **"LCFS Payment"** which is described below:
 - (i)
$$[\text{LCFS Credits Resale Price}] \times [(\text{Brown Gas Credit Generation Rate}) \times (\text{cumulative Gas MMBtus dispensed from the Station (as determined in accordance with Seller's LCFS and RFS compliance protocol) during the applicable calendar quarter where such calendar quarter is within the Delivery Period})];$$

plus

- (ii) $[\text{LCFS Credits Resale Price}] \times [(\text{applicable Calendar Year Buyer Percentage of LCFS Credit Generation Rate as shown in the table above}) \times [(\text{applicable LCFS Credit Generation Rate}) \times ((\text{cumulative Gas MMBtus dispensed from the Station (as determined in accordance with Seller's LCFS and RFS compliance protocol) during the applicable calendar quarter where such calendar quarter is within the Delivery Period})]]]$.
- (3) The RIN Payment and the LCFS Payment shall collectively be referred to as the “**Seller Payment**”. Specifically, and only, for the purposes of determining the Seller Payment, and subject to Buyer’s compliance with the Buyer Minimum Commitment and Section 2(a) of the Special Conditions, all Gas supplied to the Station is deemed to be RNG with the applicable CI Number shown in the table above for the applicable calendar year. Buyer acknowledges and agrees that the CI for the actual Biogas supplied by Seller to Buyer pursuant to this Transaction Confirmation will vary over the Delivery Period, however, the CI number used to determine the Seller Payments will not vary from the applicable numbers described above except in the event of a Missed Month as described in Section 2(a) of the Special Conditions.
- (4) In the event CARB modifies the LCFS CI benchmarks for diesel during the term of this Transaction Confirmation, the numbers above shall be proportionally adjusted by Seller to maintain the economic intent of the parties as of the day they entered into this Transaction Confirmation. Upon the determination of such adjustment by Seller, Seller shall provide Buyer with a new table which upon Seller’s transmission of such updated table to Buyer shall be deemed to automatically supersede and replace the table above.

BIOGAS SUPPLY ADDENDUM

This Biogas Supply Addendum (this “Addendum”) is made and entered into effective as of _____ (the “Effective Date”), by and between Clean Energy Renewable Fuels, LLC (“Seller”), a Delaware limited liability company and City of Clovis (“Buyer”).

WHEREAS Buyer and Seller are parties to that certain NAESB Base Contract for Sale and Purchase of Natural Gas dated _____ (as amended, supplemented or modified by the parties from time to time) (the “Base Contract”); and

WHEREAS, the parties desire to set forth the additional terms and conditions related to Transaction Confirmations for the purchase and sale of Biogas whereby Buyer will be the party purchasing and receiving the Biogas and Seller will be the party selling and delivering the Biogas.

NOW, THEREFORE, in consideration of the premises and agreements set forth hereinafter, the sufficiency of such consideration being acknowledged by the parties, the parties hereby agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms when used herein will have the meanings set forth below. Capitalized terms used in this Addendum but not defined herein are as defined in the Base Contract.

“**Addendum**” has the meaning set forth in the preamble.

“**Advanced Biofuel**” means a renewable fuel as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012)), other than ethanol derived from corn starch, and which must achieve a Lifecycle Greenhouse Gas Emission displacement of fifty percent (50%) compared to the baseline Lifecycle Greenhouse Gas Emissions.

“**Alternative Fuel**” means any transportation fuel that is not California reformulated gasoline or a diesel fuel, including but not limited to, those fuels specified in the California Low Carbon Fuel Standard (Cal. Code Regs. tit. 17, § 95480.1(a)(12) (2010)).

“**Base Contract**” has the meaning set forth in the preamble.

“**Biogas**” means pipeline quality Gas derived from the decomposition of organic matter that meets the EPA RFS eligibility requirements as either an Advanced Biofuel or Cellulosic Biofuel.

“**Biogas Supply Source**” has the meaning set forth in the applicable Transaction Confirmation.

“**Calendar Quarter**” means each individually the periods January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

“**CARB**” means the California Air Resources Board or its successor agency and policies established under the California Low Carbon Fuel Standard Regulation, (Cal. Code Regs. tit. 17, §§ 95480 – 90 (2010).), (collectively, the “**LCFS**”) applying to any transportation fuel that is sold, supplied, or offered for sale in California.

“**Cellulosic Biofuel**” means a renewable fuel derived from any cellulose, hemi-cellulose or lignin that has lifecycle greenhouse gas emissions that are at least sixty percent (60%) less than the Baseline Lifecycle Greenhouse Gas emissions (as set forth in the EPA RFS program (40 C.F.R. § 80.1401 (2012))).

“**Disqualified Biogas**” means Gas that was initially determined by the parties upon delivery to be Biogas but subsequently becomes disqualified as Biogas by not satisfying the requirements of the EPA Renewable Fuels Standard or the CARB LCFS.

“**EPA**” means the United States Environmental Protection Agency.

“**EPA RFS**” means the renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010.

“**Green Attributes**” means any and all attributes, including Lifecycle Greenhouse Gas Emissions, associated with the

production, sale and use of Biogas as an Advanced Biofuel, Cellulosic Biofuel, low carbon fuel or Alternative Fuel as necessary to generate or claim applicable CARB LCFS Credits and EPA RINs.

“Green Attribute Program” means any federal, state or local program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., U.S. federal, state, or local agencies), or non-governmental agency from time to time.

“Green Attribute Regulator” means the governmental agency responsible for the oversight and administration of the relevant Green Attribute Program.

“Green Premium” means the price premium per MMBtu of Biogas added to the market Gas price that may account for the generation of the Green Attributes.

“Greenhouse Gas” means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as Greenhouse Gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric tonne of carbon dioxide equivalent.

“LCFS Credits” shall mean credits generated and traded under the California Air Resources Board Low Carbon Fuel Standard, with each credit equal to one metric tonne of Carbon Dioxide reductions as compared to the baseline CO₂ emissions under the Low Carbon Fuel Standard.

“Lifecycle Greenhouse Gas Emissions” means the aggregate quantity of Greenhouse Gas emissions (including direct emissions and significant indirect emissions from land use changes), as determined by the EPA RFS or CARB, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

“Project” means a Biogas production project which produces Biogas.

“Renewable Biogas” or **“RNG”** has the same meaning as Biogas.

“Renewable Identification Number (RIN)” is a number generated to represent a volume of renewable fuel as set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 75 Fed. Reg. 16484 (March 26, 2010) (codified at 40 C.F.R. § 80.1425 (2011); 40 C.F.R. § 80.1426 (2012)).

“Vehicle Fuel” means compressed natural gas (CNG) or liquefied natural gas (LNG) derived from Biogas and used in transportation vehicles.

ARTICLE II. SPECIFIC TERMS OF PURCHASE AND SALE

In addition to the terms and conditions set forth in the Base Contract, the following terms and conditions will govern the purchase and sale of Biogas.

2.1 **Transaction Confirmation.** A Transaction Confirmation will be entered into by the parties for each transaction in connection with this Addendum and will be governed by the provisions of this Addendum, together with the Base Contract. Notwithstanding any provision of the Base Contract concerning transaction procedures, the parties agree that any Transaction Confirmation must be executed by both parties in order for the Transaction to be binding upon the parties.

2.2 **Further Assurances.** Each party will provide the other party such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Addendum (including pursuant to any audit of this Addendum and/or the Transaction Confirmation by a third party).

2.3 **Indemnifications.**

In addition to the indemnity obligations set forth in Section 8.3 of the Base Contract and notwithstanding any and all

limitations on damages set forth herein, Seller agrees to indemnify Buyer and save them harmless from all Claims arising out of any third-party claim from any and all persons, arising from or out of (i) all claims or losses of any kind and all persons arising from any Seller-provided falsehood, material inaccuracy or misleading statement or information in any supporting documentation, including, without limitation, registrations or any attestation related to RINs or LCFS Credits generation delivered under the Contract, (ii) Seller's gross negligence or willful misconduct, or (iii) Seller's breach of the Contract.

In addition to the indemnity obligations set forth in Section 8.3 of the Base Contract and notwithstanding any and all limitations on damages set forth herein, Buyer agrees to indemnify Seller and save them harmless from all Claims arising out of any third party claim based on (i) any Buyer-provided falsehoods, misrepresentations, material inaccuracies or misleading statement in any supporting documentation, including, without limitation, registrations or any attestation related to RINs or LCFS Credits, supplied by Buyer to Seller, (ii) Buyer's gross negligence or willful misconduct, or (iii) Buyer's breach of the Contract.

ARTICLE III. ARBITRATION

3.1 Any unresolved dispute arising out of or relating to this Contract, or the breach, termination or validity thereof, shall be finally settled in accordance with the American Arbitration Association ("AAA") rules for commercial arbitration in effect on the date of this Addendum. The arbitrators shall be independent and selected by AAA. If the total amount in dispute is less than One Million US Dollars (\$1,000,000) there shall be a single (1) arbitrator. If the total amount in dispute is One Million US Dollars (\$1,000,000) or greater, there shall be three (3) arbitrators. The award of the arbitrators shall be accompanied by a reasoned opinion. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Addendum. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be Orange County, California, and the language of the arbitration shall be English. Except to the extent expressly provided in the Contract, the arbitrators are not empowered to award consequential, indirect, special, punitive or exemplary damages, and each Party hereby irrevocably waives any damages in excess of actual damages. Either Party may apply to the arbitrators seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). The courts of the State of California shall have jurisdiction to hear any action to compel arbitration or any other judicial proceedings with respect to this Addendum.

ARTICLE IV. MISCELLANEOUS

5.1 Audit, Finality of Invoices. In addition to the audit provisions set forth in Section 5.1 of the Base Contract, the parties agree that the finality of all invoices and billings shall not apply to payments related to Green Attributes and the responsible party under the Contract shall continue to be responsible for such amounts.

5.2 Authority to Execute. Each of the parties to this Addendum represents and warrants that, as of the Effective Date: (i) it has full and complete authority to enter into and perform this Addendum; (ii) the person who executes this Addendum on its behalf has full and complete authority to do so and is empowered to bind it thereby; and (iii) it is not insolvent and has not sought protection from its creditors under the United States Bankruptcy Code, or under any similar laws.

5.3 Miscellaneous. This Addendum may be executed in multiple counterparts, each of which will constitute an original and all of which together will constitute one and the same instrument. The headings and subheadings contained in this Addendum are used solely for convenience and shall not be used to construe or interpret the provisions of this Addendum. The language used in this Addendum is the product of both parties' efforts and each party irrevocably waives the benefit of any rule of contract construction which disfavors the drafter of a contract or the drafter of specific language in a contract. In the event of any inconsistency between this Addendum, Transaction Confirmation and the Base Contract, the terms to govern shall be in the following priority: (i) Transaction Confirmation, (ii) Addendum, and (iii) Base Contract.

5.4 Survival of Terms. To the extent that this Addendum is terminated, the parties agree that any and all terms and conditions of this Addendum that are necessary to effectuate the parties' rights and remedies as a result of an Event of Default will survive the termination of this Addendum until such time as the rights and remedies and all disputes related thereto are fully and finally resolved.

5.5 Governing Law. The law governing the Base Contract shall apply to this Addendum, except to the extent that the Green Attribute Regulator, together with regulations and decisions promulgated under such Green Attribute Program, are applicable to the purchase and sales of Biogas.

5.6 Amendment to Base Contract.

(i) The following definition is added to Section 2 of the Base Contract:

“Contract Price” shall mean, as applicable, the quantity of Gas, or RINs, or LCFS Credits to be delivered and taken as agreed to by the parties in a transaction.

(ii) Section 10.2(viii) of the Base Contract is amended by deleting the word “second” and replacing it with the word “fifth.” In addition, the following shall be added before the period: “(vii) makes any material misrepresentation or material inaccuracy or misleading statement in any supporting documentation, including, without limitation, registrations or any attestation related to RIN or LCFS Credit generation based on Biogas purchased under this Contract which results in material liability being incurred by the other party which is not cured within thirty (30) Business Days or such longer period is required to cure such event if the party attempting such cure is utilizing commercially reasonable efforts to do so; (viii) commits any material fraudulent act; or (ix) breach or fail to perform any other material obligation under this Contract (except to the extent such failure constitutes a separate Event of Default, and except for such party’s obligations to deliver or receive Firm Gas, Biogas, RINs or LCFS Credits (the exclusive remedy for which is provided in Section 3)) if such failure is not remedied within thirty (30) Business Days after receipt of written Notice or such longer period is required to cure such event if the party attempting such cure is utilizing commercially reasonable efforts to do so.”

(iii) In Section 7.6, add the following at the end of the first sentence: “; provided, however, that such documents are not subject to any work product or attorney-client privilege protections”. In addition, add the following at the end of the next to last sentence before the “.”: “; provided, however, that the finality of all invoices and billings shall not apply to (i) Taxes, (ii) any adjustments made by Transporter(s) under the terms of its applicable tariff, or (iii) payments related to Green Attributes, RINs or LCFS Credits; and the responsible party under the Contract shall continue to be responsible for such amounts”.

(iv) In Section 15.10: (i) in the second line, add “or any financial information provided by a party under the terms of this Contract” after “the terms of any transaction” and (ii) in the third line add “Affiliates, auditors,” before “employees”.

IN WITNESS WHEREOF, and with the intent to be legally bound, the parties hereto have caused this Addendum to be executed by their duly authorized officers or representatives as of the Effective Date.

Seller: **Clean Energy Renewable Fuels, LLC**

Buyer: **City of Clovis**

By: _____

By: _____

Name: Robert M. Vreeland

Name: John Holt

Title: Chief Financial Officer

Title: City Manager

Date: _____

Date: _____



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: December 5, 2022

SUBJECT: Public Utilities – Approval – Authorize the Execution of a Real Property Purchase and Sale Agreement for the Property Located at 8761 E. Barstow Avenue, Clovis, CA from Darlene A. Millhollin and Janet Stockton, Co-Trustees of the Darlene A. Millhollin Trust, in the Amount of \$3,403,000; and Approval – Authorize Staff to Develop an Agreement Memorializing a \$1,701,500 Inter-Fund Loan from the Water Enterprise Fund to the Parks and Acquisition Developer Fund; and Approval – Res. 22-____, Amending the 2022-2023 Water Enterprise and Water Developer Budgets to Allocate Funds in the Amount of \$3,403,000 for Purchase of the Property.

ATTACHMENTS:

1. Location and Vicinity Map
2. Purchase Agreement and Joint Escrow Instructions
3. Resolution and Budget Amendment

CONFLICT OF INTEREST

None.

RECOMMENDATION

1. For the City Council to authorize the execution of a real property purchase and sale agreement for the property located at 8761 E. Barstow Avenue, Clovis, CA with Darlene A. Millhollin and Janet Stockton, Co-Trustees of the Darlene A. Millhollin Trust, in the amount of \$3,403,000; and
2. For the City Council to authorize staff to develop and execute an agreement memorializing a \$1,701,500 inter-fund loan from the Water Enterprise Fund to the Parks and Acquisition Developer Fund (Parks); and
3. For the City Council to approve a resolution amending the 2022-2023 Water Enterprise and Water Developer budgets to allocate \$3,403,000 to purchase the property.

EXECUTIVE SUMMARY

Approval of this request would allow the City Manager to sign the agreement and execute the purchase of real property located at 8761 E. Barstow Avenue (APN 554-052-26), located in the southeast area of Barstow and Leonard Avenues. The property is bordered by the Enterprise Canal on the north, the Dog Creek on the south, and Agua Dulce on the west. The fair market value of the property was appraised at \$3,403,000 and staff negotiated the property purchase at this price. The property would be used as a park site per the 2014 General Plan, with a water feature that would function as a recharge basin.

The purchase price of the property will be split proportionately between the Parks, Water Developer, and Water Enterprise Funds based on the planned development of the site. Staff evaluated the Water Developer and Water Enterprise Funds and determined there are adequate funds to pay for the property purchase. However, there are currently not sufficient funds in the Parks account to pay outright for its proportionate share. To finance the Parks portion of the purchase of the property, staff is recommending a \$1,701,500 inter-fund loan from the Water Enterprise Fund to the Parks Fund. If approved, staff will work with the City Auditor and the City Attorney to formalize an agreement that will memorialize the terms of the loan. Once completed, staff will return to Council for consideration. Staff has evaluated and determined that the Water Enterprise Fund has an adequate fund balance to loan the Parks Fund the specified amount for a term not to exceed ten (10) years.

Staff is requesting Council to approve a resolution to amend the 2022-2023 Water Enterprise and Water Developer budgets to account for the additional expenditures for the requested property purchase. The Water Enterprise and Water Developer Funds would pay the purchase price and escrow costs, and the Water Enterprise Fund would be repaid by the Parks Fund based on proportionate share.

BACKGROUND

Per Council authorization, staff negotiated for the potential property purchase at 8761 E. Barstow Avenue to be developed dually as a park and a recharge basin. Staff initially received authorization from Council to negotiate for the purchase of the property on August 1, 2022.

The 2014 General Plan designates the land use of the property at 8761 E. Barstow Avenue (APN 554-052-26) as a future park. The purchase of this property will allow for the future development of the property as a park per the General Plan. In addition, the 2017 Water Master Plan Update plans for 80 acres of intentional recharge. Due to the location of the property adjacent to the Enterprise Canal, which is used to convey the City's surface water to the Surface Water Treatment Plant (SWTP), this property presents a unique opportunity for the City to meet multiple planning goals by developing this property as an open space park with an intentional recharge basin that serves as a water feature for the park.

Staff negotiated a purchase price based on the market valuation (appraisal) performed by James G. Palmer Appraisals, Inc. The appraisal valued the property at \$3,403,000 and staff provided an offer of \$3,403,000 that was accepted by the seller. Staff believes the appraised value is

warranted for the reasons listed above. Execution of the proposed agreement will allow the City to open an escrow account and complete the property purchase transaction.

FISCAL IMPACT

The purchase price of the property is \$3,403,000. There will be some minor incidental costs in escrow; however, those costs are unknown at this time. Staff expects the costs to be less than \$5,000 and will be paid from existing department budget authorizations. Funds will be budgeted for this property purchase in the Water Enterprise and Water Developer accounts as per the attached Budget Amendment (Attachment 3). There will be no fiscal impact to the General Fund and the Water Enterprise account has available funding to cover the initial property purchase.

The Parks and Water Developer Funds will be responsible to cover their proportionate share of the property purchase. The Parks proportionate share is 50% of the purchase price, which is \$1,701,500. The Water Developer share is \$1,276,125, and the remaining share of \$425,375 is the responsibility of the Water Enterprise Fund. Currently, there are not sufficient funds in Parks to pay for their portion of the property outright. Staff is recommending utilizing a loan from the Water Fund to finance the purchase, with future development impact fees paying down the loan. The loan will be paid back potentially with interest based on the City's current LAIF rate (currently 1.35%).

REASON FOR RECOMMENDATION

Acquisition of the property would provide a site to develop a City park as designated in the 2014 General Plan. In addition, the location of the site allows a unique opportunity to develop an intentional recharge basin on this site that would double as a water feature for the park.

ACTIONS FOLLOWING APPROVAL

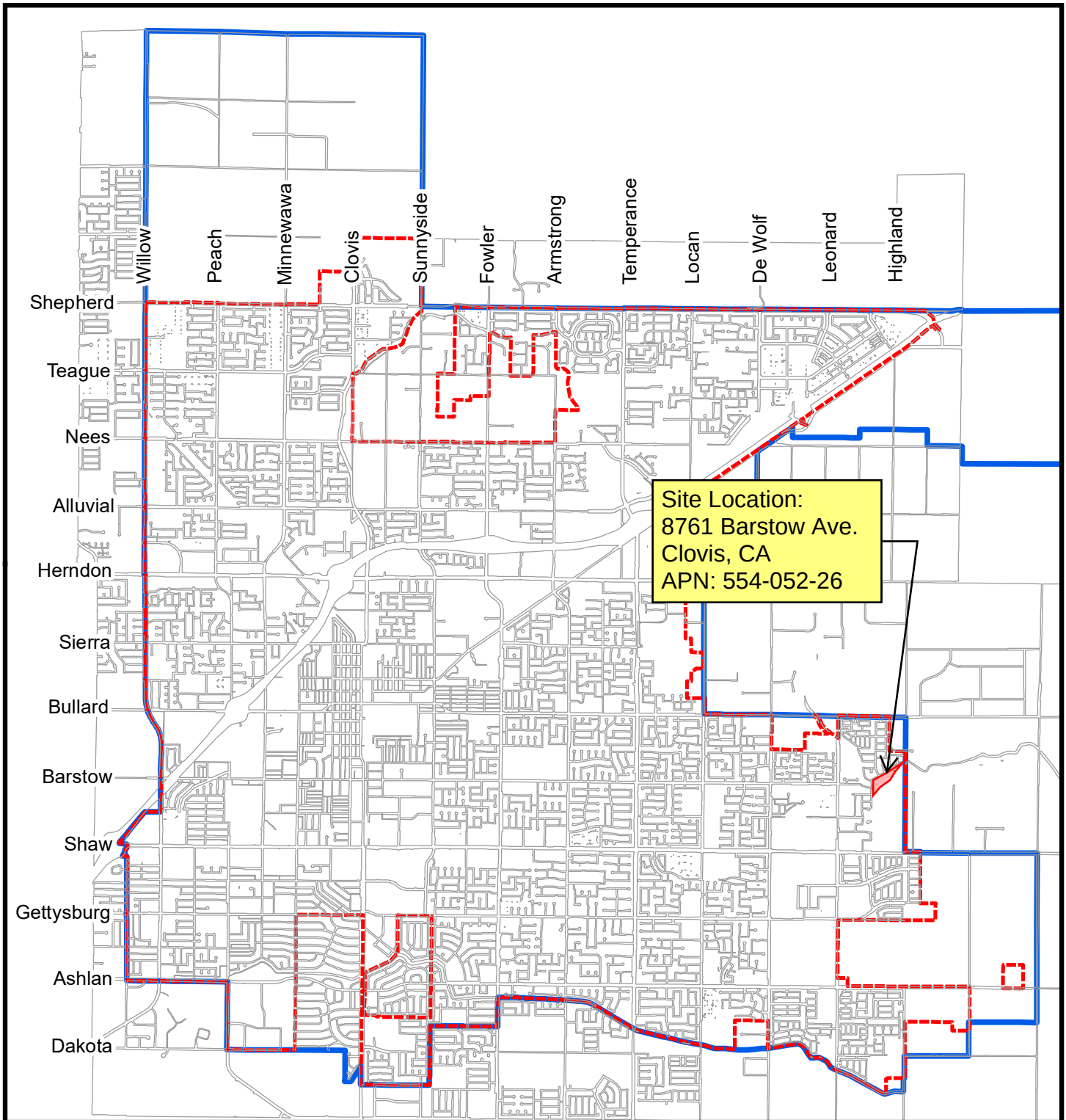
1. The City Manager will execute the property purchase agreement and all other necessary documents to close escrow.
2. Funds will be appropriated in the City of Clovis 2022-2023 Water Enterprise and Water Developer budgets for purchase of the property as specified in the attached Budget Amendment (Attachment 3).
3. Staff will work with the City Auditor and the City Attorney's office to formalize an agreement that will memorialize the terms of the loan between the Water Enterprise Fund and the Parks Fund. Once completed, staff will return to council for consideration.

Prepared by: Scott Redelfs, Public Utilities Director

Reviewed by: City Manager *AR*

VICINITY MAP

PUD - 8761 Barstow Avenue Property Purchase



ATTACHMENT 1



REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement ("Agreement") is entered into by and between the City of Clovis, a California municipal corporation ("Buyer") and Darlene A. Millhollin and Janet Stockton, Co-Trustees of the Darlene A. Millhollin Trust dated February 23, 2022 ("Seller") pursuant to the following recitals, which are a substantive part of this Agreement:

RECITALS:

A. WHEREAS, Seller owns certain real property located at 8761 E. Barstow Avenue, City of Clovis (currently identified by the City of Clovis with newer addresses as 4006, 4012, and 4062 Barstow Avenue), within the County of Fresno, State of California, as described below (the "Property"); and

B. WHEREAS, Buyer desires to acquire the Property for public facilities and related uses in connection with the City of Clovis parks and public utilities operations (the "Project"); and

C. WHEREAS, Seller desires to sell the Property to Buyer under the terms and conditions of this Agreement; and

D. WHEREAS, Seller initiated an offer to Buyer to sell the Property at the time of Buyer negotiations for different property at a different location owned by Seller, at which time Buyer determined it could use the Property for the Project; and

E. WHEREAS, family members of Seller are currently residing on the Property (the "Family Members"), without a written lease; and

F. WHEREAS, Seller desires to have up to six (6) months for the Family Members to vacate the Property after title transfers to Buyer; and

G. WHEREAS, Buyer is amendable to allowing the Family Members to remain on the Property after title transfers for up to 6 months provided Escrow remains open during that time period and Thirty Thousand Dollars (\$30,000.00) of the sale proceeds are held back until the Property is vacated.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT:

1. The Property. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and acquire from Seller, subject to the terms and conditions set forth herein, that certain real property, located at 8761 E. Barstow Avenue, City of Clovis (currently identified by the City of Clovis with

newer addresses as 4006, 4012, and 4062 Barstow Avenue), in the County of Fresno, California, Fresno County Assessor's Parcel No. 554-052-26 as more particularly described in **Exhibit A** attached hereto and incorporated herein, along with all easements, licenses, and interests appurtenant thereto, and all entitlements, owned or held by Seller in connection therewith (the "Property").

2. Purchase Price. The total purchase price to be paid by Buyer for the Property shall be Three Million Four Hundred and Three Thousand dollars (\$3,403,000.00) (the "Purchase Price"). Seller and Buyer stipulate that the Purchase Price is the fair market value of the Property. As provided herein, Buyer shall pay the Purchase Price by depositing funds into the escrow in time to meet the Title Company's requirements for immediately available funds at close of escrow.

3. Seller's representations and warranties. Seller represents and warrants that: (a) to the best of Seller's knowledge, Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property, (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, or judicial order concerning the Property; and (d) Seller has no knowledge of any material defects in the Property, including, but not limited to, the presence of any hazardous materials in the soil and/or water on, under, or around the Property. These warranties shall survive the close of escrow and the recording of the grant deed.

4. Buyer's representations and warranties. Buyer represents and warrants that it has the authority to enter into this Agreement, and upon execution of this Agreement, and subject to the conditions precedent set forth herein, Buyer will have full authority to carry out the provisions of this Agreement. These warranties shall survive the close of escrow and the recording of the grant deed.

5. Escrow. Upon execution of this Agreement, Buyer and Seller agree to open an escrow account with Old Republic Title Company, located at 7451 North Remington Ave. #102, Fresno, CA 93711 ("Title Company") for the purposes of preparing a preliminary title report, arranging for title insurance desired by Buyer, preparing the grant deed, preparing and recording new legal descriptions for both properties, ensuring that the proper authority for selling the property is obtained, and other customary provisions. Buyer and Seller shall execute Escrow instructions needed to carry out this section.

5.1 Deposits into escrow. Buyer and Seller will deposit all documents, money, and other items with the Title Company that is: (a) identified in this Agreement or, (b) required by the Title Company to effect the close of escrow as provided herein.

5.2 Title. Seller must convey title to the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Seller.

5.3 Title and closing costs. Seller shall pay costs to convey title in the condition

described in Section 5.2 above, including but not limited to any fees associated with the partial or full reconveyance of any deed(s) of trust. Seller must pay costs for any delinquent and/or unpaid taxes, assessments, or liens. Buyer shall pay the costs of any owner's title policy, insuring Buyer's title in the condition described in Section 5.2, and all escrow fees, and costs to record the grant deed. Buyer and Seller shall pay any other costs according to the custom in Fresno County.

- 5.4 Close of escrow. The close of escrow shall occur in two parts. Part 1 will occur upon transfer of good and marketable title and the Purchase Price proceeds (less the \$30,000.00 Holdback described below) being dispersed ("Part 1 Title Closing"). Part 2 will occur after the Family Members have vacated the Property and the remaining \$30,000.00 Purchase Price proceeds being dispersed ("Part 2 Property Vacation Closing"). The Escrow will be considered open until Part 2 Property Vacation Closing. The following shall apply:

Part 1 Title Closing: The escrow for Part 1 Title Closing shall be in condition to close when all conditions precedent to Closing are satisfied or waived, Buyer has deposited the full Purchase Price, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed conveying title to the Property from Seller to Buyer. The escrow for Part 1 Title Closing will be considered closed on the date the grant deed is recorded and Disbursement 1 (as described below) is paid to Seller.

Part 2 Property Vacation Closing: The Escrow for Part 2 Property Vacation Closing shall be in condition to close when the Family Members have vacated the Property in accordance with Section 8 and Disbursement 2 (as described below) is paid to Seller. Buyer shall deliver written notice to Title Company when the Property is vacated, with a copy to Seller.

- 5.5 Disbursements. Disbursements shall occur in two parts concurrent with Part 1 Title Closing and Part 2 Property Vacation Closing. The following shall apply:

Disbursement 1: At Part 1 Title Closing, Title Company shall disburse the Purchase Price to Seller, less Thirty Thousand Dollars (\$30,000.00) (the "Holdback"), and less Seller's costs to clear title, prorations, and other costs, if any, and when Title Company is prepared to issue an owner's title policy to Buyer insuring Buyer's fee title in the condition set forth in Section 5.2 above, for the amount designated by Buyer.

Disbursement 2: At Part 2 Property Vacation Closing, Title Company shall disburse the Holdback in the amount of \$30,000.00. No interest shall be due on the Holdback.

- Seller and Buyer may make arrangements with the Title Company for deposit

of the Holdback in an interest bearing account, in which case the interest proceeds shall be paid to Seller provided that the Family Members timely vacate the Property as set forth in Section 8. If the Family Members do not timely vacate the Property, any interest shall belong to Buyer.

- 5.6 Risk of loss. Risk of loss or damage to the Property, or any improvements thereon, shall pass from Seller to Buyer upon Part 2 Property Vacation Closing. Use of the Property after Part 1 Title Closing shall be subject to section 8.

6. Conditions precedent to Closing. Close of escrow and Buyer's obligation to purchase the Property are subject to the satisfaction of the conditions precedent stated herein, including Buyer's and Seller's performance of all their respective obligations under this Agreement, and that all of the representations and warranties of the parties remain true as the close of escrow. The conditions are solely for Buyer's benefit unless otherwise indicated. Each condition must be satisfied or Buyer must waive it in writing prior to close of escrow. If any condition is not timely satisfied, Buyer may waive the condition and close escrow, or it may terminate this Agreement by giving the Seller and Title Company 5 days' written notice. After expiration of the 5 days, this Agreement, and the escrow shall terminate. Upon termination, the Title Company shall return any documents and money deposited into escrow to the respective depositor, after deducting any escrow cancellation fee, and Buyer will have no further obligation to Seller.

7. Buyer's right to enter Property. Upon execution of this Agreement, Seller grants to Buyer, its agents, employees, permittees, contractors, or assigns, an immediate right to, at reasonable times, enter upon, over, across, and under the Property for purposes of accomplishing all necessary due diligence thereto, including but not limited to, investigations, tests, surveying, and minor improvements for the Project on the Property. Buyer agrees to give seller twenty-four (24) hour notice before entry of the Property. Fences and structures on the Property may not be removed until Seller and the Family Members vacate the Property. Such right of entry shall be irrevocable until Part 2 Property Vacation Closing. The Purchase Price herein includes full payment for such immediate right of entry on the Property, including damages, if any. Buyer shall cure or indemnify Seller, and carry liability insurance, for any damage to the Property or substantial interference with the possession or use of the Property caused by Buyer, its agents, employees, permittees, contractors, or assigns by Buyer under this Section.

8. Use of Property after Part 1 Title Closing. After Part 1 Title Closing and until Part 2 Property Vacation Closing, the following shall apply:

- 8.1 Occupation. The existing Family Members may continue to occupy the Property, at no charge to Seller. No additional persons shall occupy the Property. The period of additional occupation shall not exceed one hundred eighty (180) days from Part 1 Title Closing. This date shall be known as the "Vacation Date".
- 8.2 Maintenance. During occupancy of the Property by the Family Members, Seller shall be responsible for maintenance of the Property, including all land and improvements,

regardless of their condition. This obligation includes, but is not limited to, all residential homes, accessory structures, fixtures, water conveyance facilities (well), and sewer facilities (septic). Seller and the Family Members shall comply with all applicable codes governing occupancy of the Property.

- 8.3 Utilities. Seller shall be responsible for all utilities used or consumed on the Property. This obligation includes, but is not limited to, water, sewer, electricity, gas, telephone, and internet.
- 8.4 Taxes. Seller shall be responsible for all property taxes, and any other taxes, fees, or assessments that may become due during occupation of the Property.
- 8.5 No Landlord/Tenant relationship. No landlord/tenant relationship shall exist between Buyer and Seller or any of the Family Members. All provisions of California law, including the California Civil Code applying to landlord obligations shall have no applicability here and Seller expressly waives any such rights on its behalf and behalf of the Family members. Seller agrees that this waiver is fair and reasonable in light of Buyer allowing continued use of the Property for up to 180 days after Part 1 Title Closing, and the fact that Buyer has no contractual or other relationship with Seller or the Family members relating to occupancy of the Property.
- 8.6 Personal property. Seller shall remove all personal property prior to Part 2 Property Vacation Closing. Any personal property remaining on the Vacation Date shall become the property of Buyer, and Buyer may dispose of such personal property in any way it sees fit.
- 8.7 Relocation assistance. Seller agrees that Seller initiated sale of the Property with the consent of the Family Members, and that no relocation assistance under California or federal law shall be due Seller or the Family Members. All compensation due Seller or the Family Members is encompassed within the terms of this Agreement.

9. Failure to Vacate Property. If the Property is not vacated by the Vacation Date (180 days from Part 1 Title Closing) as required by this Agreement, any interest on the Holdback funds shall belong to Buyer. If the Property is not vacated by the Family Members within two hundred forty (240) days from Part 1 Title Closing, or Seller allowed any other persons to occupy the Property and those persons remain on the Property beyond 240 days from Part 1 Title Closing, Buyer may keep the Holdback funds and initiate all remedies allowed by law for removal of the Family Members or any other occupants. In that scenario, Buyer may deliver written notice to Title Company that this condition has been triggered, with a copy to Seller. Within ten (10) days of the notice to Title Company, Title Company shall release the Holdback funds to Buyer, and any interest thereon, and the remaining open escrow shall terminate.

10. Miscellaneous Provisions.

- 10.1 Notices. Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced to writing and delivered in person or mailed by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier, next day delivery, to the party who is to receive such notice. Such notices shall be to the addresses set forth below. When delivered personally, such notice shall be deemed given when received or refused. When delivered by certified mail, the notice shall be deemed to have been delivered three (3) business days following deposit in the U.S. Mail. When delivered by nationally recognized overnight courier, the notice shall be deemed received on the next business day following deposit with such courier.

To Seller:

Darlene Millhollin
9259 Santa Margarita Rd.
Atascadero, CA 93422

To Buyer:

Scott Redelfs
Public Utilities
City of Clovis
155 N. Sunnyside Ave
Clovis, CA 93611

- 10.2 Entire Agreement. This Agreement is the entire agreement between Seller and Buyer regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understandings, written or oral. Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement.
- 10.3 Amendment or Termination. This Agreement may only be amended or terminated by mutual written consent of the Seller and Buyer, unless otherwise expressly provided herein.
- 10.4 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder.
- 10.5 Time of the Essence. Time is of the essence of each term in this Agreement.
- 10.6 Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed according to California law.
- 10.7 Authority. Each person executing this Agreement on behalf of any party does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of and fully bind such party.
- 10.8 Waiver. Any party's waiver of a breach of any provision herein will not be a continuing waiver or a waiver of any subsequent breach of that or any other provision

of this Agreement.

10.9 Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any provision in this Agreement will not affect the other provisions, unless removal of that provision fundamentally alters the terms of this Agreement.

10.10 Interpretation. This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

BUYER:
City of Clovis, A California Municipal Corporation

By: _____
John Holt, City Manager

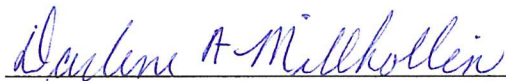
Dated: November __, 2022

ATTEST:

By: _____
Karey Cha, City Clerk

Dated: November __, 2022

SELLER:


Darlene A. Millhollin, Co-Trustee of the
Darlene A. Millhollin Trust dated February
23, 2022

Dated: November 14, 2022


Janet Stockton, Co-Trustee of the Darlene
A. Millhollin Trust dated February 23, 2022

Dated: November 14, 2022

J:\WDOCS\00609\001\agt\01000383.DOC

Exhibit A
(Legal description)

ORDER NO. : 1411025440

EXHIBIT A

The land referred to is situated in the County of Fresno, City of Clovis, State of California, and is described as follows:

Parcel A of Parcel Map 2020-05 according to the map thereof filed for record December 18, 2020 in Book [76 of Parcel Maps at pages 44 through 47](#), inclusive, Fresno County Records

APN: 554-052-26

RESOLUTION NO. 22-**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AN AMENDMENT TO THE ANNUAL BUDGET FOR
FISCAL YEAR 2022-2023**

WHEREAS, the City Council adopted the 2022-2023 Budget on June 13, 2022; and

WHEREAS, the City Council is amending the 2022-2023 Budget to include Water Enterprise and Water Developer expenditures to purchase property associated with a 2014 City of Clovis General Plan Park Site; and

WHEREAS, the expenditures were not included in the 2022-2023 Budget.

NOW, THEREFORE BE IT RESOLVED, the City of Clovis approves the budget amendment as shown in the "Summary of Expenditures by Department" and "Summary of Expenditures by Fund," attached 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 December 5, 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: December 5, 2022

Mayor

City Clerk

SUMMARY OF EXPENDITURES BY DEPARTMENT

Department

Public Utilities Department

<i>Water Enterprise</i>	<i>\$2,126,875.00</i>
-------------------------	-----------------------

Total	\$2,126,875.00
--------------	-----------------------

Planning and Development Services

<i>Water Developer</i>	<i>\$1,276,125.00</i>
------------------------	-----------------------

Total	\$1,276,125.00
--------------	-----------------------

SUMMARY OF EXPENDITURES BY FUND

Fund

<i>Water Enterprise</i>	<i>\$2,126,875.00</i>
-------------------------	-----------------------

<i>Water Developer</i>	<i>\$1,276,125.00</i>
------------------------	-----------------------

Total	\$3,403,000.00
--------------	-----------------------

NET GENERAL FUND SUPPORT

Total	\$0
--------------	------------



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: December 5, 2022

SUBJECT: Public Utilities – Approval – Authorize the Execution of a Real Property Purchase and Sale Agreement to Acquire Property Located at 1589/1599 Menlo Avenue, Clovis, CA from Janet Stockton in the Amount of \$796,000; and Approval – Authorize the Execution of a Land Lease Agreement with Janet Stockton for Property Located at 1589/1599 Menlo Avenue, Clovis, CA; and Approval – Res. 22-____, Amending the 2022-2023 Water, Sewer, and Refuse Enterprise Budgets to Allocate \$796,000 for Purchase of the Property.

ATTACHMENTS:

1. Location and Vicinity Map
2. Purchase Agreement, Joint Escrow Instructions, and Land Lease Agreement
3. Resolution and Budget Amendment

CONFLICT OF INTEREST

None

RECOMMENDATION

1. For the City Council to authorize the execution of a real property purchase and sale agreement for the property located at 1589/1599 Menlo Avenue, Clovis, CA with Janet Stockton in the amount of \$796,000;
2. For the City Council to authorize the execution of a land lease agreement and all other necessary documents with Janet Stockton for property located at 1589/1599 Menlo Avenue, Clovis, CA; and
3. For the City Council to approve a Resolution amending the 2022-2023 Water, Sewer, and Refuse Enterprise budgets to allocate \$796,000 to purchase the property.

EXECUTIVE SUMMARY

Approval of this request would allow the City Manager to sign the agreement and execute the purchase of real property located at 1589/1599 Menlo Avenue (APN 491-140-30S), adjacent to

the southeast portion of the City of Clovis Corporation Yard. The fair market value of the property was appraised at \$796,000 and staff negotiated the property purchase at this price.

The purchase of this property will allow for the necessary expansion of the City of Clovis Corporation Yard as operations continue to grow. The Public Utilities Department will be able to fully utilize the property at the expiration of the land lease agreement with Janet Stockton, which will occur on October 31, 2030. This property would be utilized to expand future City of Clovis maintenance operations to alleviate congestion at the Corporation Yard and would provide for additional needed space for the growing Water, Sewer, and Refuse operations. The site also includes access onto Menlo Avenue for ingress and egress of City vehicles.

Approval of this request would also authorize the City Manager to sign a land lease agreement with the current owner of the property. The land lease agreement would allow Ms. Janet Stockton to lease the property until October 2030, when it is anticipated that the City would need the additional space. The land lease agreement is a no-fee agreement included as part of the negotiated property purchase. It is important to secure the property now due to the importance of the location adjacent to the City of Clovis Corporation and the long-term benefit to City operations.

Staff is requesting Council approve a resolution to amend the 2022-2023 Water, Sewer, and Refuse budgets to account for the additional expenditures for the requested property purchase. The three Enterprise funds of Water, Sewer, and Refuse would each fund one-third (1/3) of the purchase price and escrow costs due to the projected use of the new facility. Other operational sections could also use the new facility and lease the space accordingly.

BACKGROUND

Per Council authorization, staff negotiated for the potential property purchase at 1589/1599 Menlo Avenue for the expansion of maintenance and operations of the Public Utilities Department. The addition of this property would provide the Public Utilities Department with additional space to locate a portion of operations and maintenance staff, vehicles, and storage. The property has existing warehouse space that will be very beneficial in the future. Staff initially received authorization from Council to negotiate for the purchase of the property on August 1, 2022.

The Corporation Yard will become increasingly limited in space as the city continues to grow at a rapid pace. It is necessary that the Public Utilities Department continues to find additional space to house maintenance staff, vehicles, and operational materials. The Public Utilities Department has also been looking for a site to potentially operate future shredding and recycling events and an area that could be used as an additional sandbag pick-up location for City of Clovis residents. The existing Corporation Yard was not designed with ease of public access or public convenience in mind. This site will provide more convenient access for the public.

The site consists of slightly more than three-quarters (0.85) of an acre of land and has approximately 7,950 square feet of building. The building improvements are divided into approximately 6,000 square feet of steel framed warehouse space and approximately 1,950 square feet of wood framed office space. The warehouse will be used for operations and storage,

as the warehouse facilities in the Corporation Yard are being used near their maximum limits. The office spaces would be used for staff as needed for effective operations.

Staff negotiated a purchase price based on the market valuation (appraisal) performed by James G. Palmer Appraisals, Inc. The appraisal valued the property at \$796,000 and staff provided an offer of \$796,000 that was accepted by the seller. A condition of the sale includes entering into a land lease agreement with the seller that will allow her to continue using the property until October 2030, when it is anticipated that the City would need the additional space. Staff believes the appraised value and the negotiated lease agreement is warranted for the following reasons: 1) As opposed to a negotiated option to purchase the property at the end of an 8-10 year period, this arrangement allows the City the certainty of concluding the purchase of the property now so that the acquisition is complete. This is preferred over an option agreement that would not allow for the sale to be complete for many years and likely at a higher price. 2) The location adjacent to the Corporation Yard allows future staff to fully utilize the site in conjunction with existing operations at the Corporation Yard. 3) The site fronts Menlo Avenue, giving the Public Utilities Department a much-needed access point for ingress and egress. 4) As the city continues to develop and grow, the Public Utilities Department needs to grow with it to continue providing the exceptional service that City of Clovis residents expect. The addition of this property will allow for additional storage, parking, and housing of staff to meet expectations. Execution of the proposed agreement will allow the City to open an escrow account and complete the property purchase transaction.

The site would primarily be used for Water, Sewer, and Refuse operations. Other operations may be located at the new facility and would fund their portion of office and ground space as appropriate. Enterprise funds are available for purchase of this property. Each Enterprise fund will share in one-third of the costs to purchase the property. A budget amendment for the Water, Sewer, and Refuse funds will need to be done to allocate the expenditures for their share of the property purchase.

FISCAL IMPACT

The purchase price of the property is \$796,000. There will be some minor incidental costs in escrow; however, those costs are unknown at this time. Staff expects the costs to be less than \$5,000 and will be paid from existing department budget authorizations. Funds will be budgeted for this property purchase in the Water, Sewer, and Refuse Enterprise accounts as per the attached budget amendment (Attachment 3). There will be no fiscal impact to the General Fund and all three Enterprise accounts have available funding to cover their share of the property purchase. Each of the three Enterprise funds will pay one-third of the purchase price, which is \$265,334 per fund.

REASON FOR RECOMMENDATION

Acquisition of the property would provide the additional area needed for future growth of the Public Utilities Department. The property is in an ideal location and will be used to house staff, provide parking for future growth, provide a convenient location for public interaction, and provide for additional operational area and storage.

ACTIONS FOLLOWING APPROVAL

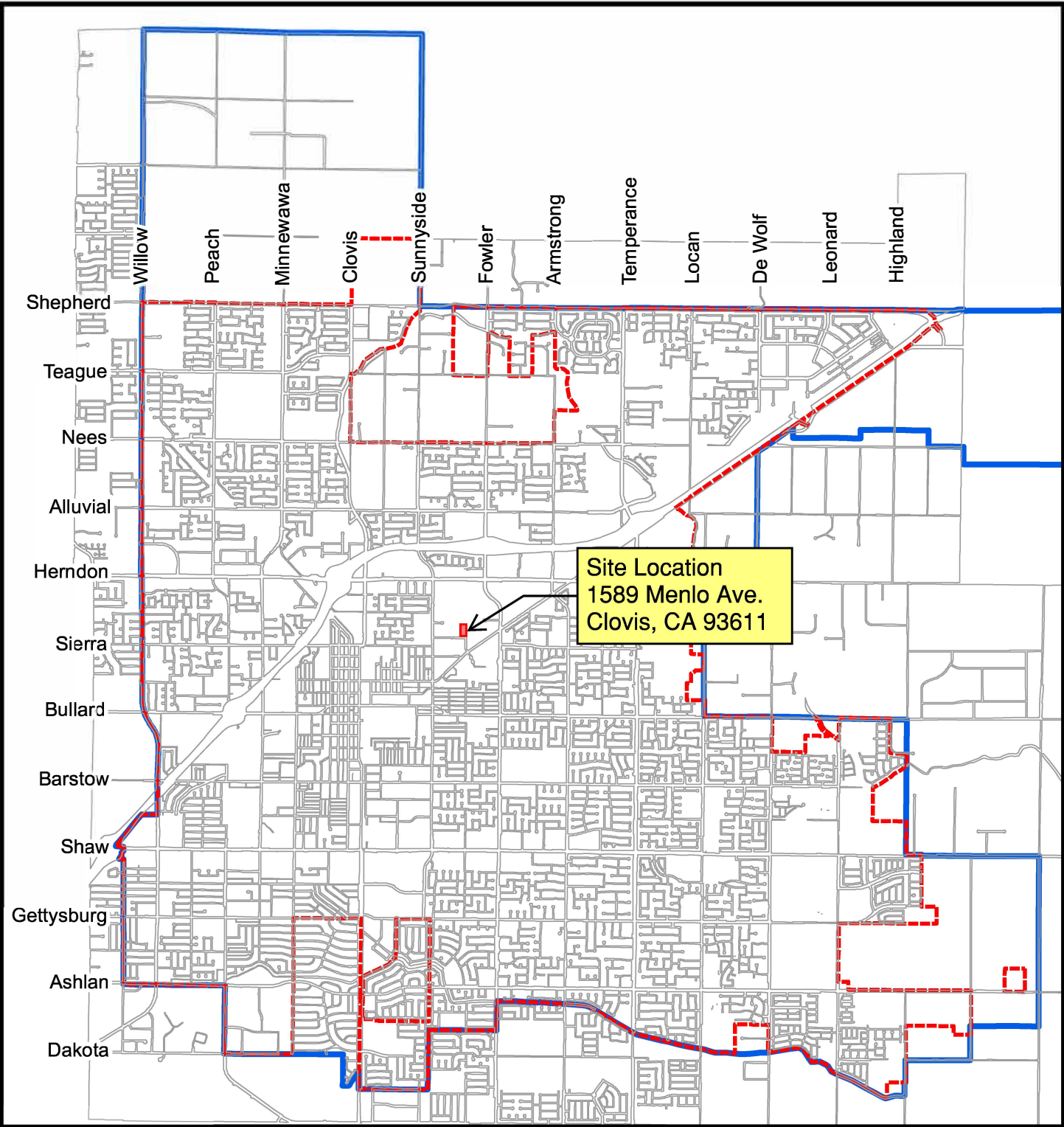
1. The City Manager will execute the property purchase agreement, land lease agreement, and all other necessary documents to close escrow.
2. Funds will be appropriated in the City of Clovis 2022-2023 Water, Sewer, and Refuse Enterprise budgets for purchase of the property, as specified in the attached budget amendment (Attachment 3).

Prepared by: Scott Redelfs, Public Utilities Director

Reviewed by: City Manager AR

VICINITY MAP

PUD - 1589 Menlo Avenue Property Purchase



ATTACHMENT 1



**REAL PROPERTY PURCHASE AND SALE AGREEMENT
1589 MENLO AVENUE, CITY OF CLOVIS, CA**

This Real Property Purchase and Sale Agreement ("Agreement") is entered into by and between the City of Clovis, a California municipal corporation ("City" or "Buyer") and Janet Stockton ("Stockton" or "Seller") pursuant to the following recitals, which are a substantive part of this Agreement. The Agreement is effective on the date signed by City.

RECITALS

A. Seller owns certain real property located at 1589/1599 Menlo Avenue in the City of Clovis, as described below ("Property"). The Property shall include the Land and Building as further described herein.

B. The Property is adjacent to existing City public works facilities, and City desires to acquire the Property for an expansion of City facilities and related uses ("Project").

C. The Property is approximately 36,960 square feet with an approximate 7,952 square foot building constructed in 1990 ("Building"). The Building is currently leased to Ewing Irrigation Products, Inc. ("Tenant" or "Ewing Irrigation") under the terms of a lease dated April 10, 1995, as amended ("Ewing Lease"). For purposes of this Agreement, the Building includes any accessory structures on the Property currently used by Ewing Irrigation.

D. The Ewing Lease will expire on October 31, 2025, with an option to renew for one additional five year period, until October 31, 2030 ("Maximum Lease Term"). The Ewing Lease, as amended, is on file with Seller with a copy provided to City.

E. Seller desires to sell the Property to City, provided Seller can continue to rent the Building and collect rents through the Maximum Lease Term.

F. City is amenable to Seller's request to collect rents through the Maximum Lease term, and City and Seller have reached agreement on sale of the Property, subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Seller agree as follows:

AGREEMENT

1. Land Purchase. Seller agrees to sell and convey to City, and City agrees to purchase and acquire from Seller, that certain real property consisting of the land only ("Land"), located at 1589/1599 Menlo Avenue, City of Clovis, in the County of Fresno, California, Fresno County Assessor's Parcel No. 554-052-26 as more particularly described in **Exhibit A** attached hereto and

incorporated herein, along with all easements, licenses, and interests appurtenant thereto, and all entitlements, owned or held by Seller in connection therewith (the "Property").

2. Building Ownership. The Building shall remain under the ownership of Seller until the end of the Maximum Lease Term, at which time Seller shall release all interests in the Building to City at no cost to City ("Release of Interests"). The Release of Interests shall be by quit claim deed, and/or such other evidence satisfactory to City and the Fresno County Recorder's Office sufficient to evidence ownership of the Building in the City.

3. Land Lease. Concurrently with Closing for sale of the Land, City and Seller will enter into the land lease attached as **Exhibit B** ("Land Lease"), which will allow Seller to use the Land for continued operation and maintenance of the Building and collection of rents to the end of the Maximum Lease Term. The Land Lease sets forth City and Seller's obligations with respect to the Land and Building, Land and Building property tax obligations, what happens to the Building at the end of the Land Lease, and related terms.

3.1 Insurance. Seller shall provide the evidence of insurance required by the Land Lease prior to Closing.

4. Purchase Price. The total purchase price to be paid by City for the Land, and subsequent no cost Release of Interests in the Building, shall be Seven Hundred Ninety Six Thousand Dollars (\$796,000.00) (the "Purchase Price"). Seller and City stipulate that the Purchase Price is the fair market value of the Property (Land and Building) and is just compensation for the Property, including any and all other losses, whether by way of improvements, severance damages, cost to cure, goodwill or otherwise. As provided herein, City shall pay the Purchase Price by depositing funds into the escrow in time to meet the Title Company's requirements for immediately available funds at close of escrow.

5. Seller's representations and warranties. Seller represents and warrants that: (a) to the best of Seller's knowledge, Seller owns the Property and any accessory structures, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, or judicial order concerning the Property; (d) Seller has no knowledge of any material defects in the Property, including, but not limited to, the presence of any hazardous materials in the soil and/or water on, under, or around the Property; (e) Seller has authority to enter into this Agreement and the Land Lease; and (f) Seller will have full authority and is capable of complying with the terms of the Land Use. These warranties shall survive the close of escrow and the recording of the grant deed.

6. Buyer's representations and warranties. City represents and warrants that it has the authority to enter into this Agreement, and upon execution of this Agreement, and subject to the conditions precedent set forth herein, City will have full authority to carry out the provisions of this Agreement and the Land Lease. These warranties shall survive the close of escrow and the recording of the

grant deed.

7. Escrow. Upon execution of this Agreement, City and Seller agree to open an escrow account with Old Republic Title Company, located at 7451 North Remington Ave. #102, Fresno, CA 93711 ("Title Company") for the purposes of preparing a preliminary title report, arranging for title insurance desired by City, preparing the grant deed, ensuring that the proper authority for selling the property is obtained, recording of the grant deed and Land Lease, and other customary provisions. City and Seller shall execute Escrow instructions needed to carry out this section.

7.1 Deposits into escrow. Buyer and Seller will deposit all documents, money, and other items with the Title Company that is: (a) identified in this Agreement; or (b) required by the Title Company to effect the close of escrow as provided herein.

7.2 Title. Seller must convey title to the Land to City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Seller. With respect to the Building, Seller must also provide proof satisfactory to City and the Title Company that there are no title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Seller.

7.3 Title and closing costs. Seller will pay costs to convey title to the Land in the condition described in Section 7.2 above, including but not limited to any fees associated with the partial or full reconveyance of any deed(s) of trust. Seller must pay costs for any delinquent and/or unpaid taxes, assessments, or liens. Property taxes after the Close of Escrow shall be handled in accordance with the Land Lease. City shall pay the costs of any owner's title policy, insuring City's title in the condition described in Section 7.2, and all escrow fees, and costs to record the grant deed. City and Seller will pay any other costs according to the custom in Fresno County.

7.4 Close of escrow. Escrow shall be in condition to close ("Closing") when: all conditions precedent to Closing are satisfied or waived; City has deposited the full Purchase Price; the Title Company is prepared to issue the title policy described herein; with respect to the Building, the Title Company has received proof that there are no title defects, liens, encumbrances, conditions, covenants, restrictions, or other adverse interests of record or known to Seller; and the Title Company is otherwise able to record the grant deed conveying title to the Land from Seller to City. The escrow will be considered closed on the date the grant deed is recorded.

7.5 Disbursements. At Closing, Title Company shall disburse the Purchase Price to Seller, less Seller's costs to clear title, prorations, and other costs, if any, and when Title Company is prepared to issue an owner's title policy to City insuring City's fee title in the condition set forth in Section 7.2 above, for the amount designated by City.

8. Conditions precedent to Closing. Close of escrow and Buyer's obligation to purchase the

Property are subject to the satisfaction of the conditions precedent stated herein, including Buyer's and Seller's performance of all their respective obligations under this Agreement, and that all the representations and warranties of the parties remain true as the close of escrow. The conditions are solely for Buyer's benefit unless otherwise indicated. Each condition must be satisfied or Buyer must waive it in writing prior to close of escrow. If any condition is not timely satisfied, Buyer may waive the condition and close escrow, or it may terminate this Agreement by giving the Seller and Title Company 5 days' written notice. After expiration of the 5 days, this Agreement, and the escrow shall terminate. Upon termination, the Title Company shall return any documents and money deposited into escrow to the respective depositor, after deducting any escrow cancellation fee, and Buyer will have no further obligation to Seller.

9. Buyer's right to enter Property. Upon execution of this Agreement, Seller grants to Buyer, its agents, employees, permittees, contractors, or assigns, an immediate right to, at reasonable times, enter upon, over, across, and under the Property for purposes of accomplishing all necessary due diligence thereto, including but not limited to, investigations, tests, and surveying. Buyer shall coordinate entry on the Property with Seller and only enter the Property and Building with Seller or Seller's representative. Such right of entry shall be irrevocable until Closing. Buyer shall cure or indemnify Seller, and carry liability insurance, for any damage to Seller's property or substantial interference with the possession or use of Seller's property caused by Buyer, its agents, employees, permittees, contractors, or assigns by Buyer under this Section.

10. Relocation assistance. Under the terms of this Agreement and the Land Lease, Seller will continue to own the Buildings and be able to fulfill the terms of the Ewing Lease. Seller will also have an opportunity to enter into a new lease consistent with the Ewing Lease term, should Ewing Irrigation not exercise their five year option. In leasing the Building, Seller will remain as the landlord and collect all rents, with no fee due the City. The City will also pay any property taxes due on the Building. In light of the foregoing, Seller agrees, on behalf of herself and the existing Tenant or any future tenant of the Building, that no relocation assistance shall be due under California or federal law from City's acquisition of the Property. All compensation due Seller and the existing Tenant or any future tenant is encompassed within the terms of this Agreement. The following advisory and release shall apply:

10.1 Acknowledgment regarding relocation assistance. Seller acknowledges that City is a public entity and is purchasing the Property for a public benefit and for future City use. Seller further acknowledges that under State law, with ordinary property purchase agreements initiated by the City, Seller and the Tenant may be entitled to relocation assistance benefits which, in general, consist of advisory assistance, moving expenses, and business reestablishment expenses ("Relocation Assistance Benefits"). Seller expressly acknowledges that since Seller is retaining ownership of the Building and maintaining the terms of the existing Ewing Lease, no Relocation Assistance Benefits are due.

10.2 Release and waiver. Seller, on behalf of herself and the existing Tenant or any future tenant of the Building, understands and agrees that all compensation due Seller and

the Tenant or any future tenant of the Building from acquisition of the Property, is encompassed within the terms of this Agreement and the Land Lease. Seller, on behalf of herself and the existing Tenant or any future tenant of the Building, hereby knowingly waives, and agrees to indemnify City from, any and all claim to Relocation Assistance Benefits, based upon any applicable federal, state and/or local enactment.

This release and Waiver is made notwithstanding section 1542 of the California Civil Code, which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Therefore, Seller expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims and causes of action which it does not know or suspect to exist in its favor, and that this release contemplates that all such claims and causes of action shall be extinguished upon execution of this Agreement.

11. Miscellaneous Provisions.

- 11.1 Notices. Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced to writing and delivered in person or mailed by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier, next day delivery, to the party who is to receive such notice. Such notices shall be to the addresses set forth below. When delivered personally, such notice shall be deemed given when received or refused. When delivered by certified mail, the notice shall be deemed to have been delivered three (3) business days following deposit in the U.S. Mail. When delivered by nationally recognized overnight courier, the notice shall be deemed received on the next business day following deposit with such courier.

To Seller:

Janet Stockton
9259 Santa Margarita Rd.
Atascadero, CA 93422

Janet Stockton
5000 Llano Road
Atascadero, CA 93422

To Buyer:

Scott Redelfs
Public Utilities
City of Clovis
155 N. Sunnyside Ave
Clovis, CA 93611

- 11.2 Entire Agreement. This Agreement is the entire agreement between Seller and Buyer regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understandings, written or oral. Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this

Agreement.

- 11.3 Amendment or Termination. This Agreement may only be amended or terminated by mutual written consent of the Seller and Buyer, unless otherwise expressly provided herein.
- 11.4 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder.
- 11.5 Time of the Essence. Time is of the essence of each term in this Agreement.
- 11.6 Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed according to California law.
- 11.7 Authority. Each person executing this Agreement on behalf of any party does hereby personally represent and warrant that he or she has the authority to execute this Agreement on behalf of and fully bind such party.
- 11.8 Waiver. Any party's waiver of a breach of any provision herein will not be a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- 11.9 Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any provision in this Agreement will not affect the other provisions, unless removal of that provision fundamentally alters the terms of this Agreement.
- 11.10 Interpretation. This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

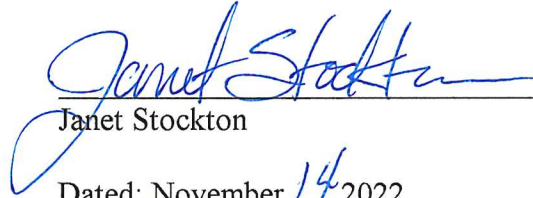
Signatures on Next Page

BUYER:
City of Clovis, A California Municipal
Corporation

By _____
John Holt, City Manager

Dated: November __, 2022

SELLER:
Janet Stockton



Janet Stockton

Dated: November 14, 2022

EXHIBIT A
LEGAL DESCRIPTION

ORDER NO. : 1411025439

EXHIBIT A

The land referred to is situated in the County of Fresno, City of Clovis, State of California, and is described as follows:

The East 112 feet of that portion of the North half of the Southeast quarter of the Southwest quarter of the Northeast quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the U.S. Government Survey thereof lying South of a line running in an Easterly and Westerly direction, said line beginning 626.35 feet North of the Southwest corner of said Northeast quarter of said Section 4 and running Easterly to a point 644.24 feet North of the Southeast quarter of the Southwest quarter of said Northeast quarter.

Except the Southerly 30 feet thereof.

EXCEPTING THEREFROM, however, an undivided 1/2 interest in and all oil, gas, petroleum, naptha and other hydrocarbon substances and minerals of whatsoever kind and nature in, upon or beneath the property hereinabove described, together with all easements and rights necessary or convenient for the production storage and transportation thereof, and the exploration and testing of the said real property, and also the right to drill for, produce and use water from said real property in connection with drilling or mining operations thereon, an reserved in a deed from Aram Marzoian, to Carl A. Poison and wife, dated January 15, 1945, and recorded February 3, 1945, as Document No. 4877, in [Book 2228, Page 277](#), of Official Records.

APN: 491-140-30

EXHIBIT B LAND LEASE

SET UP FOR RECORDING

LAND LEASE 1589 MENLO AVENUE, CITY OF CLOVIS, CA

This Land Lease ("Land Lease") is entered into by and between the City of Clovis, a California municipal corporation ("City" or "Lessor") and Janet Stockton ("Stockton" or "Lessee") pursuant to the following recitals, which are a substantive part of this Agreement:

RECITALS

- A. This Land Lease is entered into in accordance with the terms of a Purchase and Sale Agreement ("Agreement") entered into on _____, 2022, between the parties, incorporated herein by reference.
- B. The Agreement and Land Lease applies to certain real property located at 1589/1599 Menlo Avenue in the City of Clovis, ("Property").
- C. The Property is approximately 36,960 square feet of land ("Land") with an approximate 7,952 square foot building constructed in 1990 ("Building"), as more particularly described and depicted in **Exhibit A**.
- D. Pursuant to the Agreement, City acquired the Land from Stockton with Stockton retaining ownership of the Building.
- E. The Building is currently leased to Ewing Irrigation Products, Inc. ("Tenant" or "Ewing Irrigation") under the terms of a lease dated April 10, 1995, as amended ("Ewing Lease"). Stockton is the landlord under the Ewing Lease.
- F. The Ewing Lease will expire on October 31, 2025, with an option to renew for one additional five year period, until October 31, 2030 ("Maximum Lease Term"). The Ewing Lease, as amended, is on file with Stockton with a copy provided to City.
- G. Under the terms of the Agreement, City agreed to allow Stockton to use the Land for continued operation and maintenance of the Building and collection of rents to the end of the Maximum Lease Term. This Land Lease sets forth City and Stockton's obligations with respect to the Land and Building, Land and Building property tax obligations, what happens to the Building at the end of the Land Lease, and related terms.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, City and Stockton agree as follows:

AGREEMENT

1. Lease of Land. Lessor leases the Land to Lessee for the term, and upon the covenants, terms, and conditions set forth in this Land Lease. The Land is leased to Lessee in "AS IS"

condition. Lessor shall not be required to make or construct any alteration including structural changes, additions or improvements to the Land and shall have no maintenance or repair obligations with respect to the Land. Lessee shall be responsible for ensuring compliance with all applicable zoning, building and health and safety codes for occupancy or use of the Land. Lessee waives any provision of law that may require any duty of repair or maintenance of the Land by Lessor or permit Lessee to make repairs at the expense of Lessor.

2. Term and Termination. The term of this Land Lease shall be the Maximum Lease Term as set forth in the Agreement, which is October 31, 2030.

- The Land Lease shall commence on the date of Closing set forth in the Agreement (“Lease Commencement Date”).
- The Land Lease shall automatically terminate on October 31, 2030.
- The Land Lease shall terminate sooner if the Building is abandoned and the Building is not actively being marketed.
- Lessee may terminate the Land Lease prior to the expiration of the Maximum Lease Term provided the Building lease has terminated.
- Section 4 addresses the Building lease and Section 6 addresses the effect of termination.

3. Rent. Provided Lessee is in compliance with the terms and conditions of this Land Lease, no rent shall be due.

4. Use of Land. Lessee shall use the Land solely for the purposes of renting the Building and fulfilling the Ewing Lease. If Ewing Irrigation does not exercise the one time five year renewal option, Lessee may rent the building to another commercial enterprise provided any new Building lease expires no later than October 31, 2030. Lessee shall notify Ewing Irrigation and any subsequent Building tenant that the Building and Land must be vacated by October 31, 2030, and that no lease extensions or hold over options are available.

- Lessee shall provide Lessor with copies of all Building lease extensions or new Building leases within ten (10) days of execution.

5. Building Responsibility. As owner of the Building, Lessee shall continue to be solely responsible for all repairs and maintenance of the Building. Lessee shall ensure that the Building is useable for its intended purpose and meets all applicable Federal, State and local building and health and safety codes. Lessee shall comply with all terms of the Building lease.

6. Effect of Termination. Upon termination of this Land Lease, Lessee shall release all interests in the Building to City at no cost to City (“Release of Interests”). The Release of Interests shall be by quit claim deed, and/or such other evidence satisfactory to City and the Fresno County Recorder’s Office sufficient to evidence ownership of the Building in the City.

- The Building shall be in good condition, similar to its existing rental condition.

7. Compliance with Laws. Lessee shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities (including those of the City of Clovis), relating to

Lessee's use and occupancy of the Land, and rental of the Building, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. Lessee shall not use the Land or Building, or permit the Land or Building, or any portion thereof, to be improved, developed, used or occupied in any manner that is in any way in violation of this Land Lease or in violation of any law, ordinance, or regulation of any federal, state, county, or local government having jurisdiction over the Land and Building. Lessee shall not use the Land or Building, or allow the Land or Building to be used, in any manner that will constitute a waste, nuisance, or unreasonable annoyance to the neighborhood adjacent to the Property.

8. Utilities. Lessee Seller shall be responsible for all utilities used or consumed on the Land and Building. This obligation includes, but is not limited to, water, sewer, electricity, gas, telephone, and internet.

9. Taxes, Assessments, and Fees.

a. Property Taxes. Lessor shall be responsible for all property taxes on the Land and Building incurred after the Closing date set forth in the Agreement.

- The parties expect that the Land will be exempt from property taxes since it is owned by the City of Clovis.
- The parties expect that the Building will not be reassessed because it is not changing ownership.
- Lessor and Lessee shall work closely with the Fresno County tax assessor ("Tax Assessor") to ensure that the property taxes are properly apportioned between the Land and Building.
- Regardless of the Tax Assessor's final decision, Lessor agrees to pay all property taxes incurred after Closing on both the Land and Building.
- Lessee shall submit to Lessor for payment any property tax bill received by Lessee and due under this section. Lessor shall pay that bill within thirty (30) days of receipt.
- Any subsequent credits or adjustments made to the property tax bill by the Tax Assessor shall apply to the benefit of Lessor.

b. Personal Property Tax. Lessee or Lessee's tenant, shall pay before delinquency all taxes, assessments, license fees, and other charges that may be levied and assessed against the personal property of Lessee or Lessee's tenant installed or located in or on the Land and Building, if any, and that become payable during the term of this Land Lease. On demand by Lessor, Lessee shall furnish Lessor with satisfactory evidence of these payments or exemption from such payments.

c. Business Registration Fees. Lessee shall cause Lessee's tenant to pay before delinquency any and all business registration fees that may be levied and assessed against Lessee's tenant, if any, and that become payable during the term of this Lease pursuant to the Clovis Municipal Code.

10. Release, Indemnity and Hold Harmless. Lessee shall release, indemnify, hold harmless

and defend Lessor and Lessor's officers, officials, employees, agents and volunteers from and against all liability, claims, suits, damages, losses, costs and expenses, including attorneys fees, arising out of the use, occupation or control of the Land and Building by Lessee, its agents, employees, invitees, lessees, sub-lessees, or volunteers, and arising from breach of the provisions of this Land Lease by Lessee, including without limitation, loss of or damage to property, premises liability, and injuries to or death of any person, except where such claim, suit, damage, loss or expense is caused by the sole negligence of Lessor or Lessor's officials, employees, agents, or volunteers.

- This obligation shall extend to all claims that may be made by a Building tenant relating to lease of the Building.

11. Insurance Requirements. Lessee shall, at its sole cost and expense, provide evidence of insurance in a form and manner satisfactory to the City of Clovis Risk Manager covering liability and property damage. The insurance shall contain the following minimum requirements. Evidence of the insurance shall be provided concurrently with the Closing date set forth in the Agreement, which is also the Lease Commencement Date, and thereafter on an annual basis.

- Liability insurance in the amount of not less than \$2,000,000, insuring against the risks identified in Section 10.
- Property damage insurance in an amount not less than the value of the Building.
- The City shall be named as an additional insured on all policies

12. Liens and Claims. Lessee shall fully pay for all materials joined or affixed to the Land and Building and pay in full all persons who perform labor thereupon. Lessee shall not suffer any mechanics' or materialmen's liens, or stop notices, of any kind to be enforced against the Land or Building for any work done or materials furnished at Lessee's request. If any such liens are filed thereon, Lessee shall remove the same at Lessee's own expense, and shall pay any judgment that may be entered thereon or thereunder. Should Lessee fail, neglect, or refuse to do so, Lessor shall have the right to pay any amount required to release any such liens, or to defend any action brought thereon, and to pay any judgment entered therein; and Lessee shall be liable to Lessor for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment obtained therefor. Lessor may post and maintain upon the Land and Building notices of non-responsibility as provided by law.

13. Encumbrances. Lessee shall not encumber by deed of trust, mortgage or other security instrument, all or a part of Lessee's interest under this Lease without the advance and express written consent of Lessor, and upon such terms and conditions as Lessor may require.

14. Sale or Hypothecation of Lessee's Improvements. Lessee shall not sell or hypothecate any of its fixed improvements upon the Land without first obtaining Lessor's written consent therefor.

15. Successors: Assignment and Subletting. This Land Lease shall inure to the benefit of and be binding upon the successors, heirs, and assigns of the parties hereto, but shall not be assigned

or sublet by Lessee without the prior written consent of Lessor, which consent may granted or withheld in Lessor's sole discretion.

16. Bankruptcy. Lessor shall have the immediate right to terminate this Land Lease upon written notice and to take exclusive possession of the Land in the event: (a) Lessee is adjudged a bankrupt; (b) Lessee becomes insolvent; (c) any action or proceeding for debtor relief of Lessee is commenced by Lessee; or (d) Lessee seeks general debtor relief by extrajudicial means. Receipt of rent or other payments from any person for use of the Building shall not constitute a waiver of Lessor's right to terminate as above set forth.

17. Hazardous Materials. Lessee warrants and represents, on behalf of itself, and any Building tenant, that it will not use, generate, manufacture, produce, store, or dispose of, on, under, or about the Land or Building, or transport to or from the Land and Building, any Hazardous Materials as defined herein, except those uses incidental to the operation of the business of Lessee's commercial Tenant, and in accordance with all applicable laws and regulations. The term "Hazardous Materials" when used in this Land Lease shall mean any hazardous waste, hazardous substance, hazardous materials or toxic substances as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property.

18. Damages and Destruction. If the Building is damaged or destroyed during the term of this Land Lease by any casualty, Lessee shall repair or replace the Building, and continue with the Building lease, not to exceed the Maximum Lease Term. As an alternative, Lessee and the City may enter into good faith negotiations to determine if an equitable distribution of the insurance proceeds can be reached to cover City's loss of future use of the Building and Lessee's loss of rental income.

19. Eminent Domain. In the event of the taking or condemnation of all or any part of the Building before termination of the Land Lease, Lessee may receive compensation only for the taking and damaging of the Building, and only for the value of that taking reflected by the terms of this Land Lease and the Agreement.

20. Default. Lessee shall be considered in default of this Land Lease of Lessee fails to perform any provision of this Land Lease and the failure to perform is not cured within ten (10) days after written notice has been served upon Lessee.

- Notices given under this section shall specify the alleged default and the applicable Land Lease provisions and shall demand that Lessee perform the provisions of this Land Lease within the applicable period of time, or quit the Land. No such notice shall be deemed a forfeiture or a termination of this land Lease unless Lessor so elects in the notice.
- In the event of a default by Lessee under this Land Lease, Lessor may terminate this Land Lease and regain possession of the Land in the manner provided by the laws of the State of California in effect at the date of such default. Lessor shall also be entitled to recover from Lessee damages and to exercise such other rights and remedies as provided to Lessor under the laws of the State of California.

- Lessor, at any time after Lessee commits a default, can cure the default at Lessee's cost. If Lessor, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor at the time the sum is paid, and if paid at a later date, shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by Lessor until Lessor is reimbursed by Lessee.

21. Waiver. No delay or omission in the exercise of any right or remedy of Lessor on any default by Lessee shall impair such right or remedy or be construed as a waiver. Lessor's consent to or approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent act by Lessee. Any waiver by Lessor of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Land Lease.

22. Entry and Inspection of Land and Building. Lessor and its authorized representatives shall have the right to enter and inspect the Land at all reasonable times to determine whether the Land is in good condition and whether Lessee is complying with its obligations under this Land Lease. Lessee also agrees to allow Lessor reasonable access to the Building for purposes of ensuring compliance with the terms of this Land Lease.

23. Relationship of Parties. Lessor is not, nor shall it become or be deemed to be, a partner or a joint venturer with Lessee by reason of the provisions of this Land Lease nor shall this Land Lease be construed to authorize either party to act as the agent for the other.

24. Notices. Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced to writing and delivered in person or mailed by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier, next day delivery, to the party who is to receive such notice. Such notices shall be to the addresses set forth below. When delivered personally, such notice shall be deemed given when received or refused. When delivered by certified mail, the notice shall be deemed to have been delivered three (3) business days following deposit in the U.S. Mail. When delivered by nationally recognized overnight courier, the notice shall be deemed received on the next business day following deposit with such courier.

To Lessee:

Janet Stockton
9259 Santa Margarita Rd.
Atascadero, CA 93422

Janet Stockton
5000 Llano Road
Atascadero, CA 93422

To Lessor:

Scott Redelfs
Public Utilities
City of Clovis
155 N. Sunnyside Ave
Clovis, CA 93611

25. Effect of Termination of Lease. Termination or expiration of this Land Lease shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or

otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration, or thereafter if by the terms of this Land Lease it is provided that anything shall or may be done after termination or expiration hereof.

26. Amendments. This Land Lease shall not be modified or amended in any way except in writing signed by the parties hereto.

27. Entire Agreement. This Land Lease, and the Agreement, contains all the agreements of the parties concerning the subject matter of it and cannot be amended or modified except by a subsequent written agreement signed by the Lessor and Lessee.

28. Severability. The unenforceability, invalidity, or illegality of any provision of this Land Lease shall not render the other provisions unenforceable, invalid, or illegal.

29. Recording of Lease. This Land Lease shall be recorded with the Fresno County Recorder's office concurrently with the Closing date of the Agreement.

30. Nondiscrimination. Lessee herein covenants by and for itself, its successors, heirs, assigns, and all persons claiming under or through it, and this Land Lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, age, disability, or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Land herein leased nor shall Lessee itself, or any person claiming under or through Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subleases, subtenants, or vendees in the Land herein leased."

31. Authority to Execute. The signatories to this Land Lease represent that they have received authority from each entity's respective governing body to execute this Lease.

IN WITNESS WHEREOF the Lessor and Lessee have signed this Land Lease on the dates set forth below.

LESSOR:
City of Clovis, A California Municipal
Corporation

LESSEE:

By _____
John Holt, City Manager


Janet Stockton

Dated: _____, 2022

Dated: Nov. 14, 2022

EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY
(LAND AND BUILDING)

J:\wdocs\00609\001\agt\01001007.DOCX

ORDER NO. : 1411025439

EXHIBIT A

The land referred to is situated in the County of Fresno, City of Clovis, State of California, and is described as follows:

The East 112 feet of that portion of the North half of the Southeast quarter of the Southwest quarter of the Northeast quarter of Section 4, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the U.S. Government Survey thereof lying South of a line running in an Easterly and Westerly direction, said line beginning 626.35 feet North of the Southwest corner of said Northeast quarter of said Section 4 and running Easterly to a point 644.24 feet North of the Southeast quarter of the Southwest quarter of said Northeast quarter.

Except the Southerly 30 feet thereof.

EXCEPTING THEREFROM, however, an undivided 1/2 interest in and all oil, gas, petroleum, naptha and other hydrocarbon substances and minerals of whatsoever king and nature in, upon or beneath the property hereinabove described, together with all easements and rights necessary or convenient for the production storage and transportation thereof, and the exploration and testing of the said real property, and also the right to drill for, produce and use water from said real property in connection with drilling or mining operations thereon, an reserved in a deed from Aram Marzoian, to Carl A. Poison and wife, dated January 15, 1945, and recorded February 3, 1945, as Document No. 4877, in [Book 2228, Page 277](#), of Official Records.

APN: 491-140-30

Executive Summary

PROPERTY DESCRIPTION

Property Name	Office Warehouse Property
Address	1589 Menlo Avenue
City, State, Zip	Clovis, California 93611
County	Fresno
MSA	Fresno
Property Type	Industrial

Site Description

Site Area	36,960 SF
Road Frontage (LF)	132' NS Menlo Avenue
Orientation	Internal
Shape	Rectangular
Zoning	M-2
Description	Heavy Manufacturing
Flood Zone	Zone X – FEMA #06019C1585H

Improvement Description

Building Area	7,952 SF
Year Built	1990
Quality	Average
Condition	Average
Market Class	Class "C"
Construction Type	Steel Frame / Aluminum

Real Estate Tax Data

Assessor Parcel Number(s)	491-140-30S
Total Assessed Value	\$412,754.00
Real Estate Taxes	\$ 4,983.72

MARKET BOUNDARIES

North	Herndon Avenue
South	Barstow Avenue
East	Fowler Avenue
West	Clovis Avenue

HIGHEST & BEST USE

Land as Vacant	Industrial
Property as Improved	Current Use

PROPERTY VALUATION

Valuation Type	Fee Simple
Sales Comparison Approach	\$ 796,000
Cost Approach	Not Applicable
Income Capitalization Approach	\$ 769,000
Final Value Opinion	\$ 796,000

APPRAISAL DATES

Report Date	June 07, 2022
Date of Inspection	May 20, 2022
Date of Valuation	May 20, 2022
Exposure Time	12 Months

RESOLUTION NO. 22-**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AN AMENDMENT TO THE ANNUAL BUDGET FOR
FISCAL YEAR 2022-2023**

WHEREAS, the City Council adopted the 2022-2023 Budget on June 13, 2022; and

WHEREAS, the City Council is amending the 2022-2023 Budget to include Water, Sewer, and Refuse expenditures to purchase property associated with City of Clovis maintenance operations and other beneficial uses; and

WHEREAS, the expenditures were not included in the 2022-2023 Budget.

NOW, THEREFORE BE IT RESOLVED, the City of Clovis approves the budget amendment as shown in the "Summary of Expenditures by Department" and "Summary of Expenditures by Fund," attached 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 December 5, 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: December 5, 2022

Mayor

City Clerk

SUMMARY OF EXPENDITURES BY DEPARTMENT

Department

Public Utilities Department	\$796,000.00
<i>Water</i>	\$265,333.33
<i>Sewer</i>	\$265,333.33
<i>Refuse</i>	\$265,333.34
Total	\$796,000.00

SUMMARY OF EXPENDITURES BY FUND

Fund

<i>Water</i>	\$265,333.33
<i>Sewer</i>	\$265,333.33
<i>Refuse</i>	\$265,333.34
Total	\$796,000.00

NET GENERAL FUND SUPPORT

Total	\$0
--------------	------------

CITY of CLOVIS

Proclamation

Honoring Elizabeth “Betsy” Sandoval

WHEREAS, *Mrs. Elizabeth "Betsy" Sandoval is a long-time resident of Clovis, attending Weldon Elementary and Clovis Grammar School before graduating from Clovis High School in 1958. Betsy and her husband Sam raised three children who attended Clovis Unified schools, in which all three returned to work for the school district, and six grandchildren have graduated from the District; and*

WHEREAS, *Her love for the community and desire to serve the students, families and employees of Clovis Unified inspired her to run for the Governing Board in 1981. She served until 1993, and then again from 1996 until today; and*

WHEREAS, *She has served on the California School Boards Association Delegate Assembly since 1998, and as a member of the Nominating Committee, a validator for Golden Bell Awards, and served on the policy Platform Committee; and*

WHEREAS, *Mrs. Sandoval has served as an officer of the Governing Board on multiple occasions, including four terms as elected President, six terms as Clerk, and four terms as Vice President; and*

WHEREAS, *Betsy Sandoval is a model of civic responsibility to students, and routinely encourages civic learning opportunities for students and collaboration between Clovis Unified and the City of Clovis by serving on a joint subcommittee with Clovis City Council Members for decades; and*

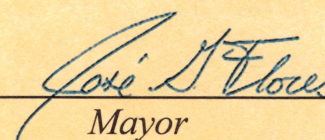
WHEREAS, *Her commitment to promoting career technical education for students led to her service on the Board of Directors for the Center for Advanced Research and Technology for multiple terms; and*

WHEREAS, *Throughout her tenure on the Governing Board and in every aspect of her life in the Clovis Unified community, Mrs. Sandoval has modeled a commitment to others above self and to the high standards and core values that have epitomized Clovis Unified over its history.*

NOW, THEREFORE, BE IT RESOLVED, *that the Clovis City Council, on behalf of the citizens of Clovis does honor and celebrate the retirement of*

Elizabeth “Betsy” Sandoval

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 December 2022.*



Mayor



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services

DATE: December 5, 2022

SUBJECT: Consider Approval – First Amendment to City Manager Employment Agreement.

Staff: Shonna Halterman, General Services Director

Recommendation: Approve

ATTACHMENTS: 1. City Manager Employment Agreement dated November 1, 2021
2. First Amendment to City Manager Employment Agreement

CONFLICT OF INTEREST

None.

RECOMMENDATION

For City Council to approve the First Amendment to City Manager Employment Agreement (Attachment 2), which sets forth the terms and conditions of the employment of John Holt as City Manager, effective January 1, 2022, through December 31, 2024.

EXECUTIVE SUMMARY

The City Council appointed John Holt as the City Manager effective January 1, 2022, and approved an employment agreement which sets forth the terms and conditions of that appointment (Attachment 1). The Council originally set the City Manager's annual salary at Step 1 of the City Manager's salary schedule that was in effect on January 1, 2022. Approving this First Amendment will place the City Manager at Step 2 of the salary schedule effective as of January 1, 2023 (Attachment 2), with a monthly salary of \$21,112, and \$253,344 annual salary.

BACKGROUND

The City Council appointed John Holt as the City Manager effective January 1, 2022, and approved an employment agreement which sets forth the terms and conditions of that appointment.

City salary schedules provide for 5 steps, with 5% increases from one step to the next. New City employees who perform according to City standards are eligible to receive annual step

increases based on performance until they have reached the highest step. After recently evaluating the City Manager's performance, the City Manager and Council are authorized to agree to an amendment to the Employment Agreement for a salary step increase to Step 2 of the current City Manager salary schedule, which amounts to a 5% increase to the current salary. Below is an excerpt of the City Manager's monthly salary from the Management Salary Schedule as approved by Council on August 1, 2022.

Position	Step 1	Step 2	Step 3	Step 4	Step 5
City Manager	20,116	21,122	22,178	23,287	24,451

It should be noted that since the approval of the City Manager Employment Agreement on November 1, 2021, the City Council approved changes to the salary schedule on July 5, 2022, and on August 1, 2022, which resulted in increases to the steps on the City Manager salary schedule. Step 2 of the current City Manager salary schedule is \$21,112 monthly, and \$253,344 annually. If the First Amendment is approved, Mr. Holt will begin receiving this salary effective as of January 1, 2023. In accordance with the Employment Agreement, Mr. Holt shall also be entitled to receive cost of living adjustments made applicable to all executive management employees, including those that may become effective in fiscal years 2023/2024.

FISCAL IMPACT

There are sufficient funds available in the Administration budget to accommodate the step increase. The salary increase from Step 1 to Step 2 for the City Manager position is \$12,072 per year.

REASON FOR RECOMMENDATION

City Manager employment agreements and amendments require approval by the City Council in open session.

ACTIONS FOLLOWING APPROVAL

The First Amendment will be executed by all parties and a personnel action form will be prepared consistent with the terms of the Employment Agreement as amended.

Prepared by: Shonna Halterman, General Services Director

Reviewed by: City Manager AH

**EMPLOYMENT AGREEMENT
CITY MANAGER, CITY OF CLOVIS**

This Employment Agreement (Agreement") is entered into on November 1, 2021, by and between the City of Clovis ("City") and John Holt ("Holt"), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

- A. City's current City Manager, Luke Serpa ("Serpa") is retiring effective December 30, 2021.
- B. City has completed the process for selecting a new City Manager to replace Serpa upon his retirement.
- C. Holt is currently serving as the Assistant City Manager and has been selected by the City Council to serve as the new City Manager upon Serpa's retirement.
- D. Holt desires to become the new City Manager upon Serpa's retirement and City desires to appoint Holt as the City Manager effective upon Serpa's retirement, subject to the terms of this Agreement.

NOW, THEREFORE, City and Holt agree as follows:

- 1. **Employment.** City employs Holt as the City Manager effective beginning on January 1, 2022. Holt will be an at-will employee serving at the pleasure of the City Council subject to the terms and conditions set forth below. Holt's employment with the City as City Manager is at the mutual consent of both Holt and the City. There are no express or implied agreements contrary to the foregoing.
- 2. **Term.** This Agreement shall be in effect for a period of three (3) years beginning on January 1, 2022, unless terminated in accordance with Section 6 below. In the event of termination pursuant to Section 6, Holt shall not be entitled to any additional compensation except as provided in Section 6.
- 3. **Salary.** Holt shall be placed on Step 1 of the City Manager's salary schedule in effect on January 1, 2022. Holt shall not be entitled to receive any step increases but will be entitled to cost of living adjustments made applicable to all executive management employees. Following Holt's December performance evaluation as addressed in Section 5 herein, City and Holt may mutually agree to a contract amendment implementing a salary step increase.
- 4. **Duties and Professional Conduct.** Holt shall have the powers and shall perform the duties prescribed in the Clovis Municipal Code for the City Manager. Holt shall also perform such additional responsibilities as may be assigned by the City

ATTACHMENT 1

Council. Holt shall adhere to the professional standards of conduct as prescribed by the International City/County Management Association.

5. Evaluation. Holt shall receive a performance evaluation in June and December of each year during the Term of this Agreement, or more often as may be requested by the City Council. It shall be the responsibility of Holt to schedule those evaluations. Failure to evaluate shall have no effect on the rights, duties, and obligations of the parties herein.

6. Termination and Severance.

a. Termination Without Cause. The majority of the entire City Council may terminate this Agreement at any time without cause by providing at least thirty (30) days written notice to Holt. The provisions of the Clovis Municipal Code, § 2.2.109, pertaining to a 90-day waiting period after a Council election shall not apply.

In the event of termination without cause, Holt shall be entitled to severance compensation equal to Holt's salary for the balance of the term of this Agreement, or three (3) months, whichever is less. Severance shall be paid in one lump sum and in the same manner as the customary payout of earned benefits.

b. Termination for Cause. City may terminate this Agreement immediately for cause. If Holt is terminated for cause, Holt shall not be entitled to the severance compensation under this Section.

c. For Cause Defined. Cause shall be defined to include, but shall not be limited to, any of the following: (a) the refusal to follow the lawful directions of the Council; (b) failure to substantially perform any of the required duties of the City Manager; (c) repeated unexcused absences from the City Manager's office and duties; (d) violation of City policies; (e) conviction of a felony or a misdemeanor crime involving acts of moral turpitude under California law; (f) use or possession of illegal drugs; (g) breach of this Agreement.

d. Termination Defined. Termination shall mean removal from office or a request that the City Manager resign. Termination shall not mean a reduction of benefits generally applicable to all management employees.

7. Notice of Resignation. Holt shall provide to City at least sixty (60) days written notice of his intent to voluntarily resign as the City Manager.

8. Conviction of Crime Involving Abuse of Office. Regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination shall be fully reimbursable to Clovis if Holt is convicted of a crime involving an abuse of his office.

9. Benefits and Allowances. During the Term of this Agreement, Holt shall continue to receive all of City's best miscellaneous executive management benefits for PERS retirement, annuities, deferred compensation, life and other insurance, expense and reimbursement allowances, medical, dental and vision plans, automobile allowances, sick leave, vacation, compensatory time off, credit union, worker's compensation and similar subsequent or replacement benefits, all in accordance with the terms and conditions thereof as adopted or approved by the City Council.

10. Professional Meetings. Holt is expected to attend appropriate professional meetings at local and state levels and to periodically report to the City Council regarding meetings attended and shall be reimbursed for the expense of attending those meetings.

11. Expense Reimbursement. City shall reimburse Holt for actual and necessary expenses incurred within the scope of employment in accordance with City's reimbursement schedules and policies.

12. Notices. Any notices required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given and deemed served upon the other party if sent by United State Postal Service, first class postage prepaid, and addressed as follows:

TO CITY: City Council
c/o City Attorney
City of Clovis
1033 Fifth Street
Clovis, CA 93612

TO EMPLOYEE: John Holt
City Manager
City of Clovis
1033 Fifth Street
Clovis, CA 93612

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the US Postal Service.

13. General Provisions.

a. Governing Law and Venue. This Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, venue shall be the state courts located in Fresno County, California.

b. Entire Agreement. This Agreement contains the entire agreement and understanding between Holt and City with respect Holt's employment as City Manager.

There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied not contained in this Agreement.

c. No Assignment. Holt may not assign or transfer any rights granted or obligations assumed under this Agreement.

d. Modification. This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument executed by both of the parties.

e. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provision of the Agreement shall continue in full force and effect.

CITY

By: _____

Jose Flores, Mayor

CITY MANAGER

By: _____

John Holt

APPROVED AS TO FORM

Scott G. Cross, City Attorney

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT
CITY MANAGER, CITY OF CLOVIS**

This First Amendment to Employment Agreement (“First Amendment”) is entered into effective January 1, 2023, between the City of Clovis (“City”) and John Holt (“Holt”), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. City and Holt entered into a City Manager Employment Agreement on November 1, 2021, effective January 1, 2022, (“Agreement”), under which City placed Holt at Step 1 of the City Manager’s salary schedule.

B. The City Council approved subsequent changes to the City Manager salary schedule on July 5, 2022, and August 1, 2022, which resulted in increases to the steps on the salary schedule.

C. City desires to place Holt on Step 2 of the current City Manager’s salary schedule, which is a monthly salary of \$21,112, and an annual salary of \$253,344.

NOW, THEREFORE, City and Holt agree as follows:

AGREEMENT

1. Section 3 of the Agreement is amended to read as follows:

3. Salary. Holt shall be placed on Step 2 of the City Manager’s salary schedule, effective as of January 1, 2023. Holt shall not be entitled to receive any step increases but will be entitled to cost of living adjustments made applicable to all executive management employees. Following Holt’s December performance evaluation as addressed in Section 5 herein, City and Holt may mutually agree to a contract amendment implementing a salary step increase.

2. Except as expressly set forth herein, all other terms of the Agreement shall remain unchanged and in full force and effect, and the Agreement shall be interpreted to give full force and effect to this First Amendment.

CITY OF CLOVIS

CITY MANAGER

By: _____
Jose Flores, Mayor

By: _____
John Holt

CITY of CLOVIS

Proclamation

Honoring José “Joe” Flores for 24 Years of Public Service

WHEREAS, Councilmember José Flores has been a major part of making Clovis what it is today for over 24 years; and

WHEREAS, In 1999, Councilmember Flores was elected to the Clovis City Council in which he has served six consecutive terms and is a three-time Mayor; and

WHEREAS, Councilmember Flores has served on various League of California Cities Committees, Clovis Rotary Club, Latino Water Coalition, North Kings Groundwater Sustainability Agency, California State University Fresno Criminology Advisory Committee, and the City of Clovis - Clovis Unified School District Subcommittee; and

WHEREAS, Councilmember Flores' numerous accomplishments are too vast to list, but to name a few, he was involved with or spearheaded: the City's Research and Technology Park; Clovis Police and Fire Department Headquarters; the Public Utilities Corporation Yard; the Miss Winkles Pet Adoption Center; Fire Stations 1, 4, 5, and 6; the Surface Water Treatment Plant; and the Water Reuse Facility. These are all places that have added great value to this community. It is nearly impossible to reflect on any significant contribution in our city over the last 24 years without seeing his influence; and

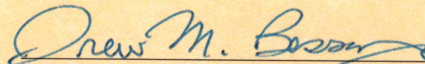
WHEREAS, Councilmember Flores continues to serve as the Chief of Police for the State Center Community College District Police Department. While Councilmember Flores' retirement from the Clovis City Council is indeed the end of an era, it is not the end of his influence because he continues to be active in our community.

NOW, THEREFORE, BE IT RESOLVED, that the Clovis City Council, on behalf of the Citizens of Clovis, does hereby recognize and honor

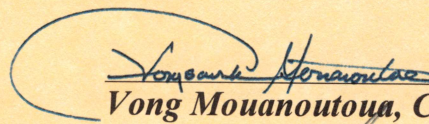
José “Joe” Flores

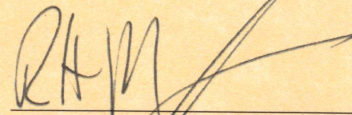
IN WITNESS THEREOF, We hereunto set our hands and cause the official seal of the City of Clovis to be affixed this 5th day of December 2022.


Lynne Ashbeck, Mayor Pro Tem


Drew Bessinger, Councilmember




Vong Mouanoutoua, Councilmember


Bob Whalen, Councilmember

CITY of CLOVIS

Proclamation

Honoring Bob Whalen for 20 Years of Public Service

WHEREAS, Councilmember Bob Whalen has been a major part of making Clovis what it is today for over 20 years; and

WHEREAS, In 2003, Councilmember Whalen was elected to the Clovis City Council in which he has served five consecutive terms and is a two-time Mayor; and

WHEREAS, Councilmember Whalen has served on the League of California Cities Public Safety Committee, San Joaquin College of Law Board of Directors, Clovis Salvation Army Board of Advisors, and Fresno County Council of Governments Policy Board; and

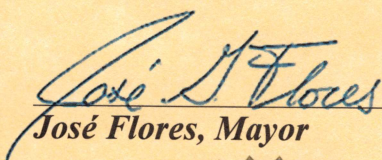
WHEREAS, Councilmember Whalen's numerous accomplishments are too vast to list, but to name a few, he was involved with or spearheaded: Clovis' vast trail system; the City's Research and Technology Park; Clovis Police and Fire Department Headquarters; the Public Utilities Corporation Yard; the Miss Winkles Pet Adoption Center; Fire Stations 1, 4, 5, and 6; the Surface Water Treatment Plant; and the Water Reuse Facility. These are all places that have added great value to this community. It is nearly impossible to reflect on any significant contribution in our city over the last 20 years without seeing his influence; and

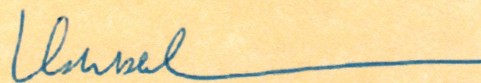
WHEREAS, Councilmember Whalen is a judge-elect of the Superior Court of Fresno County in California, where he will assume office on January 2, 2023. While Councilmember Whalen's retirement from the Clovis City Council is indeed the end of an era, it is not the end of his influence because he continues to be active in our community.

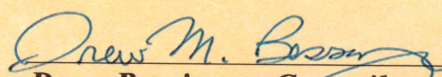
NOW, THEREFORE, BE IT RESOLVED, that the Clovis City Council, on behalf of the Citizens of Clovis, does hereby recognize and honor

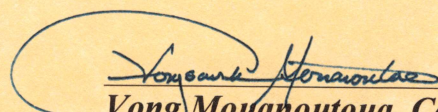
Bob Whalen

IN WITNESS THEREOF, We hereunto set our hands and cause the official seal of the City of Clovis to be affixed this 5th day of December, 2022.


José Flores, Mayor


Lynne Ashbeck, Mayor Pro Tem


Drew Bessinger, Councilmember


Vong Mouanoutoua, Councilmember

