



AGENDA

CLOVIS CITY COUNCIL

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

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.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall, in the City Clerk's office, during normal business hours. In addition, such writings and documents may be posted on the City's website at www.cityofclovis.com.

Councilmember Harry Armstrong will be participating in the meeting via teleconference from 655 West Stuart Street, Clovis CA 93612. A copy of the agenda has been posted at the teleconference location and will be open to the public during the meeting.

July 18, 2016

6:00 PM

Council Chamber

The City Council welcomes participation at Council Meetings. Members of the public may address the Council on any item of interest to the public that is scheduled on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less.

Meeting called to order by Mayor Magsig
Flag salute led by Councilmember Flores

ROLL CALL

PRESENTATIONS/PROCLAMATIONS

- A. Presentation – Fire Chief Swearing In Ceremony.
- B. Presentation of Proclamation recognizing the week of August 7-13, 2016 as International Assistance Dog Week.

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. Anyone wishing to be placed on the Agenda for a specific topic should contact the City Manager's office and submit correspondence at least 10 days before the desired date of appearance.)

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

CONSENT CALENDAR Consent Calendar items are considered routine in nature and voted upon as one item unless a request is made to give individual consideration to a specific item. (See Attached Consent Agenda.)

1. ADMINISTRATIVE ITEMS

A. ADMINISTRATION (City Manager, City Clerk, Finance)

1. Consider Approval - Designation of Voting Delegate and Alternates for the 2016 League of California Cities' Annual Conference and Business Meeting, October 5–7, 2016. (Staff: R. Woolley)

B. PLANNING AND DEVELOPMENT SERVICES

1. Consider Approval – Res. 16-____, Authorizing the City Engineer to enter into agreements with Fresno County for early construction of projects prior to annexation to the City. (Staff: M. Harrison)

2. CITY MANAGER COMMENTS

3. COUNCIL ITEMS

- A. Council Comments

4. CLOSED SESSION

- A. Government Code Section 54956.9(a)
CONFERENCE WITH LEGAL COUNCIL- EXISTING LITIGATION
Workers Compensation Case in Regards to: James Simmons

ADJOURNMENT

Meetings and Key Issues			
Aug. 1, 2016 (Mon.)	6:00 P.M.	Regular Meeting	Council Chamber
Aug. 2 – Sep. 5, 2016		Summer Recess	
Sep. 6, 2016 (Tue.)	6:00 P.M.	Regular Meeting	Council Chamber
Sep. 12, 2016 (Mon.)	6:00 P.M.	Regular Meeting	Council Chamber
Sep. 19, 2016 (Mon.)	6:00 P.M.	Regular Meeting	Council Chamber
Oct. 3, 2016 (Mon.)	6:00 P.M.	Regular Meeting	Council Chamber
Oct. 10, 2016 (Mon.)	6:00 P.M.	Regular Meeting	Council Chamber
Oct. 17, 2016 (Mon.)	6:00 P.M.	Regular Meeting	Council Chamber

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.

A. CITY CLERK

- 1) Approval - Minutes for the July 5, 2016 Council meeting.
- 2) Adopt – Ord. 16-15, An Ordinance of The City Council of The City of Clovis Amending Article 3 of Chapter 2.2 of Title 2 Pertaining to the Appointment of Reserve Police Officers. (Vote: 5-0)

B. ADMINISTRATION

- 1) No items.

C. COMMUNITY AND ECONOMIC DEVELOPMENT

- 1) Receive and File – Business Organization of Old Town (BOOT) Fourth Quarter Report, April through June 2016.

D. FINANCE

- 1) Receive and File - Investment Report for the month of May 2016.
- 2) Receive and File - Treasurer's Report for the month of May 2016.
- 3) Approval – Authorize the City Manager to execute the contract on behalf of the City for Merchant Services.

E. GENERAL SERVICES

- 1) Approval - Authorize the City Manager to approve placement of an Engineering Technician at Step 5 of the Salary Range.
- 2) Approval – Claim Rejection of the General Liability Claim Submitted by James P. Franz on behalf of the estate of Dana Jeanean Stout, John Stout, Tiffany Stout, and Martha Richardson.
- 3) Approval - Claim Rejection for General Liability Claim of Nicholas Jerome Bailey.

F. PLANNING AND DEVELOPMENT SERVICES

- 1) Approval - Final Acceptance for Tract 5664, located in the southeast area of Sierra and Temperance Avenues (De Young Properties 5418, L.P.).
- 2) Approval – Final Acceptance for CIP 15-11, Sunnyside Avenue & Third Street Entry Feature.
- 3) Approval – Final Acceptance for CIP 15-17, Local Street Reconstruction 2015.
- 4) Approval – Final Acceptance for CIP 15-04, Railroad Avenue Street Improvements.
- 5) Approval – Bid Award for CIP 14-24, Dry Creek Business Park Expansion.
- 6) Approval – Award the contract for CIP 16-15, Police and Fire Headquarters Roof Repair project, through the Purchase Order Contract process, piggybacking on an existing competitively bid process issued by the National Joint Powers Alliance; and Authorize the City Manager to execute the contract on behalf of the City.
- 7) Approval – Rejection of all bids for CIP 15-21, Santa Ana and Minnewawa Intersection Improvements.

G. PUBLIC SAFETY

- 1) Receive and File - Police Department Monthly Report for May 2016.
- 2) Approval – Authorizing the City Manager to sign the lease agreement with Pacific Gas and Electric for the use of the Clovis Fire Training Center; and Approval - Res. 16-____, Amending the General Services Budget to reflect \$47,000 in funding from the 2016/2017 first year lease with Pacific Gas & Electric and to fund General Services equipment, maintenance, and site improvements in the amount of \$33,000.

H. PUBLIC UTILITIES

- 1) No items.

I. REDEVELOPMENT SUCCESSOR AGENCY

- 1) No items.

PROCLAMATION

2016

INTERNATIONAL ASSISTANCE DOG WEEK

WHEREAS, assistance dogs transform the lives of their human partners with physical and mental disabilities; they serve as devoted companions, helpers, aides, best friends and close family members; and

WHEREAS, seizure alert response dogs alert or respond to medical conditions, such as heart attack, stroke, diabetes, epilepsy, panic attack, anxiety attack, post-traumatic stress and seizures; and

WHEREAS, guide dogs assist people with vision loss, leading these individuals around physical obstacles and to destinations such as seating, crossing streets, entering or exiting doorways, elevators and stairways, etc.; and

WHEREAS, hearing alert dogs alert people with a hearing loss to the presence of specific sounds such as doorbells, telephones, crying babies, sirens, another person, buzzing timers or sensors, knocks at the door as well as smoke, fire and clock alarms; and

WHEREAS, International Assistance Dog Week, August 7-13, 2016, provides an opportunity for us to raise awareness of the selfless way all types of assistance dogs assist individuals with mitigating their disability-related limitations.

NOW, THEREFORE, BE IT RESOLVED, that the Clovis City Council does hereby proclaim the week of August 7-13, 2016, as

INTERNATIONAL ASSISTANCE DOG WEEK

IN WITNESS THEREOF, I hereunto set my hand and cause the official seal of the City of Clovis to be affixed this 18th day of July, 2016.




Mayor

CLOVIS CITY COUNCIL MEETING

July 5, 2016

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Magsig
Flag Salute led by Councilmember Ashbeck

Roll Call: Present: Councilmembers Armstrong, Ashbeck, Flores, Whalen,
Mayor Magsig
Absent: None

6:00 – Police Lieutenant Tom Roberts and Police Officer Matt Balbach introduced detection dog Murphy, the city's newest member of the Clovis Police Department.

6:05 - PRESENTATION OF PROCLAMATION RECOGNIZING JULY 8, 2016 AS NATIONAL COLLECTOR CAR APPRECIATION DAY.

Councilmember Whalen presented a proclamation to Paul Hinkle recognizing July 8, 2016 as National Collector Car Appreciation Day.

6:11 - CONSENT CALENDAR

Motion by Councilmember Ashbeck, seconded by Councilmember Flores, that the items on the Consent Calendar be approved, including the waiver of the reading of the ordinance. Motion carried by unanimous vote.

- A1) Approved - Minutes for the June 20, 2016 Council meeting.
- A2) Adopted – **Ord. 16-14**, Authorizing Accredited Private Educational Institutions that offer Bachelor's or higher degrees to use the same development impact fee methodology as public educational institutions. (Vote: 5-0)
- D1) Approved - **Res. 16-91**, Measure C Extension Local Transportation Pass through Revenues Certification and Claim Forms for 2016-17.
- E1) Approved – **Res. 16-92**, Declaring the City's intent to continue to be a direct sponsor of the Clovis Senior Services Programs; and Authorize the City Manager to submit an application for Older Americans Act Funding for Title III C-1 Nutrition Services through the Fresno-Madera Area Agency on Aging (FMAAA).
- E2) Approved – **Res. 16-93**, Adopting the FY2016-2017 Consolidated Transportation Service Agency (CTSA) Operations and Program Budget for Roundup Transit Services.
- E3) Approved - **Res. 16-94**, Approving A Memorandum of Understanding between the City of Clovis and the Clovis Firefighters' Association.
- E4) Approval - **Res. 16-95**, Approving A Memorandum of Understanding between the City of Clovis and the Clovis Professional Technical Association Bargaining Unit.
- E5) Approved - **Res. 16-96**, Approving A Memorandum of Understanding between the City of Clovis and the Confidential Technical Financial Professionals.
- E6) Approved - **Res. 16-97**, Approving A Memorandum of Understanding between the City of Clovis and the Clovis Police Officers' Association.
- E7) Approved - **Res. 16-98**, Approving A Memorandum of Understanding between the City of Clovis and the Clovis Public Works Employee's Association Bargaining Unit.

- E8) Approved – Contract Award to EMCOR Services – Mesa Energy Systems, for Heating, Ventilation, and Air Conditioning Maintenance Services.
- E9) Approved – Contract award to Universal Coatings, Inc., to reroof Clovis Recreation Center.
- F1) Approved - Final Acceptance for CIP 14-02, Shaw-Cole Traffic Signal Modification.
- F2) Approved – **Res. 16-99**, Annexation of Proposed Tract 6082, located at the southwest corner of Bullard and La Vona Avenues to the Landscape Maintenance District No. 1 of the City of Clovis (Bonadelle Homes).
- F3) Approved – **Res. 16-100**, Final Map for Tract 6082, located at the southwest corner of Bullard and La Vona Avenues (Bonadelle Homes).
- G1) Approved – **Res. 16-101**, A Resolution declaring the property at 650 Fowler (Old Fire Station 1) as surplus and authorizing the City Manager to proceed with the sales process.
- H1) Received and Filed – Public Utilities Report for the month of April 2016.

6:13 ITEM 1A - APPROVED – RES. 16-102, A RESOLUTION ADOPTING THE CITY OF CLOVIS 2015 URBAN WATER MANAGEMENT PLAN

Assistant Public Utilities Direction Lisa Koehn presented a report on a request to adopt the City of Clovis 2015 Urban Water Management Plan. The Urban Water Management Plan must be updated every five years and submitted to the Department of Water Resources, with a resolution from the water supply agency adopting the plan. The Plan has been prepared, notice has been given to the public to review and comment and the Plan is submitted to the Council for approval and adoption. There being no public comment, Mayor Magsig closed the public portion. Discussion by the Council. Motion by Councilmember Armstrong, seconded by Councilmember Flores, for the Council to adopt the City of Clovis 2015 Urban Water Management Plan. Motion carried by unanimous vote.

6:20 ITEM 1B - APPROVED INTRODUCTION – ORD. 16-15, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS AMENDING ARTICLE 3 OF CHAPTER 2.2 OF TITLE 2 PERTAINING TO THE APPOINTMENT OF RESERVE POLICE OFFICERS AND ITEM 1C - APPROVED ADOPTION – ORD. 16-16, AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS AMENDING ARTICLE 3 OF CHAPTER 2.2 OF TITLE 2 PERTAINING TO THE APPOINTMENT OF RESERVE POLICE OFFICERS.

Police Lieutenant Curt Fleming presented a report on an Ordinance of amending Article 3 of Chapter 2.2 of Title 2 pertaining to the appointment of Reserve Police Officers. The Police Department requests authority to work with reserve officers for the performance of professional, technical and expert services and to appoint "designated" Level I Reserve Police Officers as allowed under the California Penal Code. The City has no provisions in its Municipal Code authorizing the Police Chief to make "designated" or special appointments and such an ordinance is required under the California Penal Code and the Commission on Police Officer Standards and Trainings Regulations. This ordinance will allow the Police Chief to utilize reserve officers to perform specialized and "designated" services. There being no public comment, Mayor Magsig closed the public portion. Discussion by the Council.

Motion by Councilmember Ashbeck, seconded by Councilmember Flores, for the Council to approve the introduction – **Ord. 16-15**, an Ordinance of the City Council of The City of Clovis Amending Article 3 of Chapter 2.2 of Title 2 Pertaining to the Appointment of Reserve Police Office. Motion carried by unanimous vote.

Motion by Councilmember Ashbeck, seconded by Councilmember Flores, for the Council to Adopt **Ord. 16-16**, an Urgency Ordinance of The City Council of The City of Clovis Amending Article 3 of Chapter 2.2 of Title 2 Pertaining to the Appointment of Reserve Police Officers. Motion carried by unanimous vote.

6:30 ITEM 2A1 - RECEIVED AND FILED – UPDATE ON LEGISLATION AFFECTING ELECTIONS IN FUTURE YEARS (SB 415 AND SB 493).

Assistant City Manager John Holt presented a report updating Council on legislation affecting elections in future years. There are two pieces of legislation that became effective January 1, 2016, that will affect elections in Clovis in future years. SB 415 prohibits a city from holding an election on any date other than a statewide election date (i.e. March) if doing so in the past has resulted in turnout that is at least 25 percent below the average turnout in that jurisdiction in the last four statewide general elections. SB 493 permits a city with a population of fewer than 100,000 people that elects its city council at-large to enact an ordinance switching its election method to by-district without submitting the change to voters for approval. Clovis had population of less than 100,000 for the 2010 census.

There being no public comment, Mayor Magsig closed the public portion. Discussion by the Council. It was the consensus of City Council to receive and file the report.

6:37 – ITEM 3A - APPROVED - CONFIRMATION OF CITY MANAGER'S APPOINTMENT OF FIRE CHIEF

City Manager Rob Woolley presented a report and recommendation to appoint Fire Chief John Binaski. Fire Chief Mike Despain will be retiring. Mr. Binaski has served the City of Clovis as the Deputy Fire Chief since joining the City. Previous to this Mr. Binaski served the City of Tulare Fire Department and has over 25 years of fire service experience. The City Manager has determined that John Binaski is well qualified and prepared for this leadership position, and has made the appointment as Fire Chief, subject to City Council confirmation, effective July 16, 2016.

There being no public comment, Mayor Magsig closed the public portion. Discussion by the Council. Motion by Councilmember Ashbeck, seconded by Councilmember Whalen, for the Council to confirm the appointment of Fire Chief John Binaski effective July 16, 2016. Motion carried by unanimous vote.

6:45 ITEM 4A - APPROVED – CHANGE OF COUNCIL MEETING SCHEDULE.

City Manager Rob Woolley presented a report recommending cancelling the meeting of July 11, 2016. Staff is able to consolidate the agenda items to the first and third meetings in July. Staff is recommending City Council consider canceling the meeting of July 11. Given adequate notice, staff will be able to amend the timing of actions coming

forward so that operations will not be affected by the cancellation. There being no public comment, Mayor Magsig closed the public portion. Discussion by the Council. Motion by Councilmember Ashbeck, seconded by Councilmember Flores, for the Council to cancel the meeting of July 11, 2016

6:48 ITEM 4B - COUNCIL COMMENTS

Councilmember Ashbeck commented on a neighborhood having problems with a neighbor who is flying a drone over their homes and she commented on the retirement ceremony for Ron Fujinami and thanking him for his twenty one years of service.

Councilmember Whalen reported out on League of California Cities training attended in June.

Councilmember Flores reported out on League of California Cities training attended in June.

Mayor Magsig reported out on League of California Cities training attended in June.

ADJOURNMENT

Mayor Magsig adjourned the meeting of the Council to July 18, 2016

Meeting adjourned: 6:54 p.m.

Mayor

City Clerk



AGENDA ITEM NO: **CC-A-2**

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 18, 2016

SUBJECT: Adopt – Ord. 16-15, An Ordinance of The City Council of The City of Clovis Amending Article 3 of Chapter 2.2 of Title 2 Pertaining to the Appointment of Reserve Police Officers. (Vote: 5-0)

Please direct questions to the City Manager's office at 559-324-2060.



AGENDA ITEM NO: **CC-C-1**
City Manager:

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Community and Economic Development

DATE: July 18, 2016

SUBJECT: Receive and File – Business Organization of Old Town (B.O.O.T.) Fourth Quarter Report, April through June 2016

ATTACHMENTS: (A) Business Organization of Old Town (B.O.O.T.) Fourth Quarter Report, April through June 2016

CONFLICT OF INTEREST

None

RECOMMENDATION

That the City Council receive and file the B.O.O.T. Fourth Quarter Report, April through June 2016.

EXECUTIVE SUMMARY

According to the 2015–2016 agreement between the City of Clovis and the Business Organization of Old Town, B.O.O.T. is to submit quarterly reports to the City Manager and City Council. The amount to be funded is \$11,250.

BACKGROUND

According to the 2015-2016 agreement between the City of Clovis and the Business Organization of Old Town, B.O.O.T. is to submit quarterly reports to the City Manager and City Council detailing progress of B.O.O.T.'s promotional and marketing activity. Attached, as Attachment "A", is the Fourth Quarter Report, April through June 2016 activities. The amount to be funded is \$11,250.

FISCAL IMPACT

The amount to be funded is \$11,250, which is called out in the 2015-2016 Budget.

REASON FOR RECOMMENDATION

The attached report meets the requirement established in the 2015-2016 agreement between the City of Clovis and the Business Organization of Old Town.

ACTIONS FOLLOWING APPROVAL

Staff will process payment to B.O.O.T.

Prepared by: Shawn Miller, Business Development Manager



Submitted by: Andrew Haussler, Deputy City Manager





Business Organization of Old Town Quarterly Agreement/Compliance Report 4th Quarter – April 1 through June 30, 2016

In accordance with the Agreement between City of Clovis/Community & Economic Development Department and the Business Organization of Old Town Clovis for the fiscal year 2015-2016, the following items have been accomplished to date.

Goal #1:

Maintain a viable organization with membership reflective of the diversity of Old Town Clovis.

Objective:

- To maintain current level of membership and seek new members each year.
- To unite the merchants of Old Town as a group of businesses working together for the betterment of the whole downtown district.

Strategy:

- Provide information on the website about B.O.O.T., B.O.O.T. membership, benefits of membership and application forms year round.
- Personal visits to businesses in the PBIA to recruit and retain memberships.
- Contact with businesses outside the PBIA to recruit and retain Associate Members/"Friends of B.O.O.T."
- Allow members to pay dues monthly, quarterly or semi annually.
- Create a benefits package to attract both regular and associate members.
- Design benefits that will be exclusive to B.O.O.T. membership.
- Attract Members to a co-op advertising program that runs in the last 4th quarter of the year and at other times if funds are available.
- Plan and post meeting notices for monthly B.O.O.T. membership meetings.
- Advertise frequently to promote Old Town Clovis on behalf of all merchants.
- Enhance existing programs to draw more people to Old Town.

Results:

- A membership and organization characteristic of Old Town Clovis.
- New Members are sought throughout the year and new businesses are invited to join.
- The 2016 campaign started in November 2015. Members meet at a local restaurant on the 4th Wednesday of each month.
- Board of Directors meets monthly on the 3rd Wednesday of each month to discuss issues pertinent to the organization, i.e. status of B.O.O.T members, review finances and report on events.
- Board members represent our diverse merchants groups--office professional, property owners, antique, gift and specialty store. The 2016 Board of Directors is as follows:

- ◆ Cora Shipley, President (through 2016)
- ◆ Larry Baumeister, Secretary (through 2017)
- ◆ Sheryl Michael, Treasurer (through 2016)
- ◆ Tom Frost, Secretary (through 2017)
- ◆ Karen Chisum, Director at Large (through 2016)
- ◆ Brian Smart, Director at Large (through 2017)
- ◆ Ronnie Silva, Director at Large (through 2016)
- The Marketing / Events Committee continues to create new events and activities specifically designed to bring customers directly into the businesses.

Goal #2:

Maintain Old Town Clovis' promotional activities

Objective:

- Successfully manage, promote, and operate events in Old Town Clovis, as well as create new events on an ongoing basis that attract visitors to Old Town Clovis.
- To provide a quality event giving people a reason to visit the downtown district.
- To showcase Old Town Clovis as a shopping and dining destination.
- To develop marketing strategies to keep Old Town competitive with malls and other shopping areas.
- To attract customers and visitors, both old and new, to the downtown district.
- To present Old Town Clovis as an attractive, appealing, friendly, and inviting business community.

Strategy:

- Develop, operate, promote, maintain and pay for events that bring people to Old Town Clovis.
- Establish and maintain events that highlight Old Town Clovis locally, nationally and internationally.
- Meet all requirements set by City, State and other agencies for activities, events and attractions.
- Develop new events and activities like One Enchanted Evening, the Wine Walks and the Craft Beer Crawls to bring visitors directly into the businesses.
- Create and pay for multi-media advertising campaigns for general advertising such as generic "Shop & Dine in Old Town Clovis".
- Continue to evolve events so they continue to attract new people.
- Contract with entertainers that have a following and will bring new people to Old Town.

Results:

- Spring events included the new Car Show, Wine Walk Glorious Junk Days, Wine Walk and Craft Beer Crawl. These events bring thousands of people to Old Town to shop and dine.

- The year-round Saturday morning Farmers Market has moved permanently to Pollasky at 5th Street. This location is excellent for better visibility and we have seen an increase in customers.

Goal #3:

Maintain marketing strategies, including safety and appearance, and advertising techniques to position the image of Clovis through Old Town Clovis' unique character.

Objective:

- Create a broad awareness of Old Town Clovis.
- Establish Old Town Clovis as an immediate, intermediate and end destination.
- Retain the established customer base.
- Reach out to Central California so that more people become aware of what Clovis offers.
- Work with City Officials to maintain a safe, crime free area where people feel safe and like bringing their families to Old Town.

Strategy:

- An ad agency has been hired to handle all marketing for B.O.O.T.
- Secure multi-media advertising campaigns to promote Old Town Clovis along with event generated advertising.
- Submit calendar of events to community and online calendars.
- Use Twitter, Instagram, Pinterest and Facebook to promote Old Town Clovis in general, merchant businesses and specific events.
- Secure interview segments on radio and television.
- Contribute to the cost of the Clovis Appliance/General Electric ABC/30 Skycam at 5th and Pollasky when B.O.O.T. has sufficient funds (co-op advertising).
- Advertise antique events in focused publications that are regional and national in scope for our four annual antique events. Advertise in classified ad section of regional papers as well as Craigslist to further reach surrounding areas.
- Print and distribute more than 20,000 event-specific postcards, as well as over 30,000 Calendar of Event cards. Merchants and B.O.O.T. staff go to out-of-the-area antique events to solicit dealers to come to Old Town antique shows. Merchants also distribute these very popular cards to customers.
- Ongoing outreach to businesses to locate to Old Town Clovis.
- Work with City of Clovis Police Department to create a safe atmosphere in Old Town.
- Work with City of Clovis department heads to create a clean, well maintained streetscape in Old Town.

Results:

- Archer & Hound has been retained as our advertising agency. They used non-traditional advertising avenues for our spring events, Cable TV, Digital Ads on Social Media and Pandora. They also took over BOOT's social media postings for late April, May and June which resulted in a consistent message and branding.

- Archer and Hound created many traditional TV opportunities with “stories” that were carried by local TV and Radio and Print.
- Facilitated wide exposure for Old Town Clovis, its events, character and appeal.
- Event generated advertising was assigned in cable TV, Pandora Radio and social media to improve event attendance, vendor participation, as well as awareness of Old Town Clovis.
- The Clovis Appliance/General Electric skycam with ABC-30 Action News reaches approximately 684,700 people every week and approximately 400,000 monthly unique visitors online at abc30.com. Old Town Clovis is mentioned a minimum of 3 to 4 times per day on the news program during weather reports and if we have anything special going on in Old Town, i.e. Farmers Market, the camera will show the activity. B.O.O.T. contributes co-op advertising dollars when available.
- Stimulated customer and visitor traffic in Old Town, as evidenced by increase number of customers in town for Antiques & Collectibles Fair and the year-round Saturday morning Farmers Market.

Goal #4:

Provide information on activities to the Tourism Advisory Committee.

Objective:

- Communicate information to sources essential for tourism opportunities, capturing disposable money from customers who have an option to spend it elsewhere.

Strategy:

- Participate as an active member of the Tourism Advisory Committee.
- Supply the Clovis Visitors Center with information regarding events, activities and leads for tour groups.
- Publish names and dates of tour groups through B.O.O.T. newsletter and email so businesses are prepared to show Old Town Clovis’ hospitality.
- Provided information to merchants of Old Town regarding activities conducted in and around Old Town through the B.O.O.T. newsletter. The newsletter is emailed to those who sign up for the electronic newsletter on B.O.O.T.’s website. It is mailed to all known businesses within the PBIA twice a year.
- Communicate information to merchants on activities at the monthly B.O.O.T. membership meetings.
- Post events for all organizations in Clovis on B.O.O.T. Website and insure that if someone searches for an event, B.O.O.T.’s website is in the top results.
- Provide event information for visitclovis.com.
- Actively promote Old Town Clovis and Member Businesses on Facebook, Twitter, Instagram, Pinterest and B.O.O.T.’s website.

Results:

- Insured Old Town Clovis is recognized as a tourism destination.
- Businesses in Old Town showcased Old Town as a friendly and inviting throughout the summer and fall months.
- B.O.O.T. works directly with the Visitors Center to be sure they have current event information.

Goal #5:

Obtain and maintain Workers Compensation, State Disability, and Directors and Officers Policy as well as any other insurance coverage as required by law.

Objective:

- Qualify for Workers Compensation, State Disability coverage, General Liability and any and all required insurances.

Strategy:

- To meet all requirements of renewal; indemnify, hold harmless and defend the City of Clovis, Community and Economic Development Department, its officers, agents or employees.
- Submit for renewal Directors and Officers Insurance Policy through Philadelphia Insurance.
- Complete and submit for renewal the State Fund Compensation Insurance Fund policy information update to Valley Regional Insurance Services, Agent Ron Petersen.
- Submit for approval General Liability Insurance through Charity First an "A" rated Insurance company through Agent Ron Petersen, Valley Regional.

Results:

- Obtained General Liability Policy coverage period April 21, 2016 to April 21, 2017.
- State Fund Compensation Policy renewed for period April 1 2016 to April 1, 2017.
- Directors and Officers Policy renewed for period August 4, 2016 to August 4, 2017.
- Certificates of Insurance with Endorsements provided to the City of Clovis.

Goal #6:

Annual compliance audit

Objective:

- To successfully complete a compliance audit conducted by an independent auditor.

Strategy:

- Efficiently maintain and preserve all records needed to demonstrate full compliance.

Results:

- The annual compliance audit is taking place prior to the end of July 2016. The audit will be conducted by Steve Cauthen, Classic Professional Services. The agreement between the City of Clovis, Community and Economic Development Department and the Business Organization of Old Town for July 1, 2015 through June 30, 2016 will be reviewed. A letter from Classic Professional Services will confirm contract compliance and will be submitted to the City of Clovis, Community and Economic Development Department.

Financial Status:

- See Balance Sheet Attached

SUMMARY:

Old Town Clovis plays a significant role in creating a favorable image for the City of Clovis. Growth within Old Town Clovis is one of the more important priorities to ensure the future and well-being of Clovis' Redevelopment Project Area. In order to continue the economic vitality of the central trading district, considerable time and effort has been invested in an effort to encourage new businesses to locate and expand in Old Town Clovis.

UPDATES TO THE PBIA:

- The Business Organization of Old Town represents many business and property owners and operators, within the central business district, who will be affected directly or indirectly by future business promotion efforts and seeks to strengthen the promotion of Old Town Clovis, thereby assuring its continued influence on economic growth in both Old Town Clovis and the City as a whole.
- The Centennial Plaza is now being developed by private owners for the two building pads on the north and south of the Plaza.
- City of Clovis, BOOT and owners along the Shaw Corridor are in consult with a firm out of Sacramento in looking at two separate PBIDs for the two areas. This will provide an assessment that can be used to enhance Old Town.
- There are always changes taking place in Old Town Clovis. The following details most of these changes:
 - **New Businesses within the PBIA**
No new businesses that we are aware of.


11:59 AM
06/28/16
Cash Basis

Business Organization of Old Town
Balance Sheet
As of June 28, 2016

	<u>Jun 28, 16</u>
ASSETS	
Current Assets	
Checking/Savings	
CVCB	9,396.00
Petty Cash	614.50
Total Checking/Savings	<u>10,010.50</u>
Total Current Assets	<u>10,010.50</u>
TOTAL ASSETS	<u>10,010.50</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
CVCB Loan	19,229.14
Payroll Liabilities	2,176.96
Total Other Current Liabilities	<u>21,406.10</u>
Total Current Liabilities	<u>21,406.10</u>
Long Term Liabilities	
Other Liabilities	-1,832.61
Total Long Term Liabilities	<u>-1,832.61</u>
Total Liabilities	<u>19,573.49</u>
Equity	
Opening Balance Equity	1,225.23
Unrestricted Net Assets	-21,203.54
Net Income	<u>10,415.32</u>
Total Equity	<u>-9,562.99</u>
TOTAL LIABILITIES & EQUITY	<u>10,010.50</u>



AGENDA ITEM NO: **CC-D-1**

City Manager: 

CITY OF CLOVIS REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Finance Department

DATE: July 18, 2016

SUBJECT: Receive and File - Investment Report for the Month of May 2016

Exhibits:

- (A) Distribution of Investments
- (B) Monthly Investment Transactions
- (C) Certificates of Deposit
- (D) Graph of May 31, 2016 Treasury Rates

Attached is the Investment Report for the month of May 2016. Shown in Exhibit A 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. Exhibit B reflects the monthly investment transactions for the month of May 2016. Exhibit C lists the certificates of deposit. Exhibit D is a graph of Treasury rates on May 31, 2016.

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 a manner consistent with the safeguards and diversity that a prudent investor would adhere to.
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 0.17%. The rate of return for the City of Clovis portfolio is 0.69%. The goal for the City of Clovis investment return is 120% of the 90 day Treasury bill rate. The current rate of return is 418% 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 May 2016 the average investment life of the City's investment portfolio is 0.69 years.

Current Investment Environment and Philosophy

During the month of May 2016 the Federal Reserve did not adjust the federal funds rate and it remained at 0.25 - 0.50%.

On May 31, 2016 the Treasury yield curve shows a steady increase in yields for three month treasuries through six month treasuries. As the holding period extended out beyond six months higher yields are realized.

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

- No government securities were purchased.
- \$9,000,000 of government securities were called or matured.
- 2 certificates of deposit totaling \$490,000.00 were purchased.
- 3 certificates of deposit totaling \$735,000.00 were called or matured.

Market Environment

- During May, the federal funds rate was maintained at .25% - .50%.
- On May 31, the yield curve increased steadily for shorter term treasuries (through six months) and shows larger increases beyond six month treasuries. See Exhibit D, Graph of Treasury Rates on May 31, 2016.

Prepared by: Haley Lynch, Deputy Finance Director
Submitted by: Jamie Hughson, Finance Director

A handwritten signature in black ink, appearing to read "Jamie Hughson", written over a horizontal line.

**CITY OF CLOVIS
DISTRIBUTION OF INVESTMENTS
AS OF MAY 31, 2016**

Exhibit A

	<u>COST</u>	<u>NET BOOK VALUE</u>	<u>MARKET VALUE *</u>	<u>YIELD TO MATURITY</u>	<u>STATED INTEREST RATE</u>	<u>INVEST DATE</u>	<u>MATURITY DATE</u>	<u>DAYS TO MATURITY FROM 5/31/2016</u>
GOV'T SECURITIES								
FFCB	2,999,163	2,999,163	2,999,790	0.450%	0.450%	04/23/15	09/16/16	108
FFCB	2,001,120	2,001,120	2,000,040	0.480%	0.480%	05/19/15	10/19/16	141
FHLMCMTN	3,010,053	3,010,053	3,006,210	1.000%	1.000%	12/01/15	03/08/17	433
FHLMC	3,007,944	3,007,944	3,007,740	1.000%	1.000%	12/01/15	07/28/17	575
FHLB	3,015,870	3,015,870	3,011,910	1.125%	1.125%	07/02/15	12/08/17	556
FFCB	1,000,000	1,000,000	997,340	1.080%	1.080%	04/13/15	04/13/18	682
FNMA	2,998,479	2,998,479	2,995,680	0.875%	0.875%	09/29/15	05/21/18	720
FHLB	3,000,000	3,000,000	2,988,510	1.140%	1.140%	09/29/15	09/28/18	850
FHLMCMTN	3,000,000	3,000,000	3,000,120	1.250%	1.250%	04/29/16	01/29/19	973
FHLB	3,000,000	3,000,000	2,995,470	1.250%	1.250%	04/29/16	04/29/19	1,063
SECURITIES TOTAL	<u>\$ 27,032,629</u>	<u>\$ 27,032,629</u>	<u>\$27,002,810</u>					
LAIF		<u>\$ 50,069,913</u>	<u>\$ 50,069,913</u>					
MONEY MARKET		<u>\$ 9,691,963</u>	<u>\$ 9,691,963</u>					
PREMIUM-IOC		<u>\$ -</u>	<u>\$ -</u>					
TOTAL CD'S		<u>\$ 16,724,000</u>	<u>\$ 16,794,301</u>					
TOTAL INVESTMENTS		<u>\$ 103,518,505</u>	<u>\$ 103,558,987</u>					

* Market values for securities obtained from BNY Western Trust Company

**CITY OF CLOVIS
MONTHLY INVESTMENT TRANSACTIONS
FOR THE MONTH OF MAY 2016**

Exhibit B

Institution	Description	Activity	Amount	Market Value	Rate	Activity Date	Maturity Date
American Express	CD	Maturity	(245,000)	(245,000)	0.750%	05/09/16	05/09/16
Discovery Bank	CD	Maturity	(245,000)	(245,000)	0.750%	05/09/16	05/09/16
FHLMC	Gov't Security	Full Call	(3,000,000)	(3,000,000)	0.800%	05/12/16	05/12/17
FAMCDEB	Gov't Security	Full Call	(3,000,000)	(3,000,000)	1.070%	05/17/16	02/12/18
FHLMCMTN	Gov't Security	Maturity	(3,002,040)	(3,002,040)	0.400%	05/27/16	05/27/16
Bank of NC	CD	Full Call	(245,000)	(245,000)	1.250%	05/27/16	02/27/18
Private Bank	CD	Purchase	245,000	245,000	1.100%	05/20/16	05/20/19
Horizon Bank	CD	Purchase	245,000	245,000	1.100%	05/25/16	05/24/19
Premium IOC	Premium IOC	Transfer	(899)			05/10/16	

PORTFOLIO DATA

Current Month (05/16)

	Book	Market
CD'S	\$ 16,724,000	\$ 16,794,301
Gov't Securities*	27,032,629	27,002,810
LAIF	50,069,913	50,069,913
Money Market	9,691,963	9,691,963
Premium IOC	0	0
TOTAL	\$ 103,518,505	\$ 103,558,987

One Month Previous (4/16)

	Book	Market
CD'S	\$ 16,969,000	\$ 17,020,568
Gov't Securities*	36,034,669	36,027,880
LAIF	50,069,913	50,069,913
Money Market	9,691,963	9,691,963
Premium IOC	899	899
TOTAL	\$ 112,766,444	\$ 112,811,223

Three Months Previous (2/16)

	Book	Market
CD'S	\$ 17,459,000	\$ 17,489,946
Gov't Securities*	33,034,669	33,022,690
LAIF	50,012,183	50,012,183
Money Market	9,691,963	9,691,963
Premium IOC	899	899
TOTAL	\$ 110,198,714	\$ 110,217,681

Six Months Previous (11/15)

	Book	Market
CD'S	\$ 17,454,000	\$ 17,468,420
Gov't Securities*	27,016,672	26,958,890
LAIF	49,965,938	49,965,938
Money Market	9,691,963	9,691,963
Premium IOC	899	899
TOTAL	\$ 104,129,472	\$ 104,086,110

One Year Previous (05/15)

	Book	Market
CD'S	\$ 14,615,000	\$ 14,651,477
Gov't Securities*	40,990,881	40,982,670
LAIF	49,890,473	49,890,473
Money Market	9,691,963	9,691,963
Premium IOC	10,003,749	10,003,749
TOTAL	\$ 125,192,066	\$ 125,220,332

*Adjusted Quarterly for Premium/Discount Amortization

Exhibit C

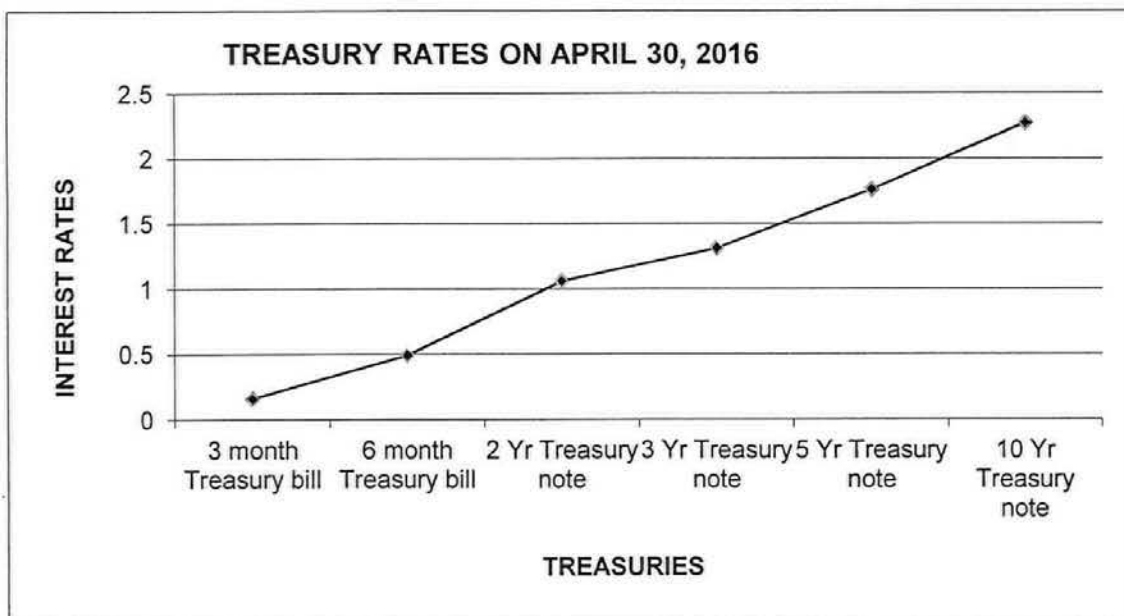
Exhibit C

**CITY OF CLOVIS
FINANCE DEPARTMENT
MAY 31, 2016 TREASURY RATES**

Exhibit D

Treasury Rates as of May 31, 2016


3 month Treasury bill	0.34
6 month Treasury bill	0.49
2 Yr Treasury note	0.87
3 Yr Treasury note	1.03
5 Yr Treasury note	1.37
10 Yr Treasury note	1.84



As indicated in the above graph, 6 month treasuries are yielding a slightly higher interest rate than 3 month treasuries. Longer term treasuries are yielding a higher interest rate than shorter term treasuries.

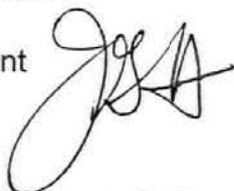


AGENDA ITEM NO: **CC-D-2**

City Manager: 

CITY OF CLOVIS REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Finance Department 

DATE: July 18, 2016

SUBJECT: Receive and File - Treasurer's Report for the Month of May 2016

ATTACHMENTS: (A) Statement of Cash Balances
(B) Summary of Investment Activity
(C) Investments with Original Maturities Exceeding One Year

Attached for the Council's information is the Treasurer's Report for the month ended **May 31, 2016**.

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. The first page of the report 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. The second page of the report summarizes the investment activity for the month and distribution, by type of investment, held by the City. The third page lists all investments with original maturities exceeding one year as of the month ended **May 31, 2016**.

**CITY OF CLOVIS
STATEMENT OF CASH BALANCES
AS OF MAY 31, 2016**

Previous Balance	\$	27,479,476.13
Deposits		29,993,680.70
Disbursements		<u>(9,576,030.38)</u>
Current Balance	\$	<u>47,897,126.45</u>

<u>FUNDS</u>		<u>BALANCE</u>
100	General Fund	\$ 10,190,112.04
201	Local Transportation	10,201,719.90
202	Parking and Business Improvements	131,827.78
203	Off Highway Use	66,211.87
205	Senior Citizen Memorial Trust	50,210.45
207	Landscape Assessment District	2,695,673.63
208	Blackhorse III (95-1) Assessment District	117,305.05
275	HCD Block Grant Fund	327,754.59
301	Park & Recreation Acquisition	3,976,460.96
305	Refuse Equipment Reserve	1,612,168.40
310	Special Street Deposit Fund	15,236,127.04
313	Successor Agency	(230,554.93)
314	Housing Successor Agency	660,391.92
402	1976 Fire Bond Redemption	25,591.17
404	1976 Sewer Bond Redemption Fund	381,503.46
501	Community Sanitation Fund	13,135,720.44
502	Sewer Service Fund	31,012,383.35
504	Sewer Capital Projects-Users	1,306,503.07
506	Sewer Capital Projects-Developer	(2,860,228.51)
507	Water Service Fund	26,269,511.44
508	Water Capital Projects-Users	3,122,997.03
509	Water Capital Projects-Developer	(154,798.27)
515	Transit Fund	693,710.25
540	Planning & Development Services	7,304,409.07
601	Property & Liability Insurance	1,020,785.60
602	Fleet Maintenance	8,302,568.09
603	Employee Benefit Fund	7,930,431.34
604	General Government Services	5,728,435.45
701	Curb & Gutter Fund	149,182.39
702	Sewer Revolving Fund	111,112.75
703	Payroll Tax & Withholding Fund	2,140,045.10
712	Temperance/Barstow Assmt Dist (98-1)	70,751.67
713	Shepherd/Temperance Assmt Dist (2000-1)	142,224.76
715	Supp Law Enforcement Serv	123,172.09
716	Asset Forfeiture	8,373.71
720	Measure A-Public Safety Facility Tax	328,413.42
736	SA Admin Trust Fund	1,421.31
741	SA Debt Service Trust Fund	84,803.25
747	Housing Successor Trust Fund	1,137.98
	SUBTOTALS	<u>\$ 151,415,570.11</u>
999	Invested Funds	<u>(103,518,443.66)</u>
	TOTAL	<u><u>\$ 47,897,126.45</u></u>

**CITY OF CLOVIS
SUMMARY OF INVESTMENT ACTIVITY
FOR THE MONTH OF MAY 2016**

<u>Balance of Investments Previous Month End</u>		<u>\$ 112,766,382.47</u>
<u>Time Certificates of Deposit Transactions</u>		
Investments	490,000.00	
Withdrawals	<u>(737,040.00)</u>	
Total CD Changes		(247,040.00)
<u>Other Changes</u>		
Government Securities	(9,000,000.00)	
US Treasury Notes	0.00	
Local Agency Investment Fund	0.00	
Money Market	0.00	
UBOC-Premium IOC	<u>(898.81)</u>	
Total Other Changes		(9,000,898.81)
Balance of Investments Current Month End		<u>\$ 103,518,443.66</u>

**CITY OF CLOVIS
DISTRIBUTION OF INVESTMENTS
AS OF MAY 31, 2016**

Insured CD's	16,723,938.75
Government Securities	27,032,629.00
Local Agency Investment Fund	50,069,913.08
US Treasury Notes	0.00
Medium Term Notes	0.00
Money Market	9,691,962.83
UBOC-Premium IOC	<u>0.00</u>
Investment Total	<u>\$ 103,518,443.66</u>

**CITY OF CLOVIS
ORIGINAL MATURITIES EXCEEDING ONE YEAR
AS OF MAY 31, 2016**

Institution	Face Value	Investment Balance At Amortized Cost	Maturity	Stated Rate
FFCB-GOVT SEC	\$3,000,000	\$2,999,163	09/16/16	0.450%
FFCB-GOVT SEC	\$2,000,000	\$2,001,120	10/19/16	0.480%
FHLMCMTN-GOVT SEC	\$3,000,000	\$3,010,053	03/08/17	1.000%
FHLMC-GOVT SEC	\$3,000,000	\$3,007,944	07/28/17	1.000%
FHLB-GOV SEC	\$3,000,000	\$3,015,870	12/08/17	1.125%
FFCB-GOVT SEC	\$1,000,000	\$1,000,000	04/13/18	1.080%
FNMA-GOVT SEC	\$3,000,000	\$2,998,479	05/21/18	0.875%
FHLB-GOVT SEC	\$3,000,000	\$3,000,000	09/28/18	1.140%
FHLMCMTN-GOVT SEC	\$3,000,000	\$3,000,000	01/29/19	1.250%
FHLB-GOV SEC	\$3,000,000	\$3,000,000	04/29/19	1.250%



AGENDA ITEM NO: **CC-D-3**

City Manager: 

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Finance Department

DATE: July 18, 2016

SUBJECT: Approval –Authorize the City Manager to execute the contract on behalf of the City for Merchant Services

ATTACHMENTS: Elavon Inc. contract

CONFLICT OF INTEREST

None

RECOMMENDATION

Authorize the City Manager to execute the contract on behalf of the City for Merchant Services.

EXECUTIVE SUMMARY

The City issued an RFP to qualified vendors for Credit/Debit Card Processing Services (Merchant Services). Seven qualified vendors responded and staff performed an analysis of the responses and determined that Elavon, Inc., the current provider of Merchant Services for the City, is able to provide the least cost service.

BACKGROUND

The City has need of Merchant Services for credit/debit card processing when citizens pay their utility bills, permit and business license fees, pet adoption fees, etc. An RFP was issued asking for qualified vendors to submit proposals itemizing all associated fees including system, transaction or credit card fees for processing credit and debit

card charges, along with a list of the equipment available and the fees associated with that equipment.

Upon receipt of the proposals, staff performed a comparative analysis. Staff requested the vendors submit itemizations of their fees in a specific manner so that the analysis could be performed accurately. After performing the analysis, Evalon, Inc was identified as the lowest cost qualified provider.

FISCAL IMPACT

By refreshing the contract with the City's current provider, Elavon, Inc., significant savings are anticipated. Staff estimates that the new contract for Merchant Services will result in annual savings of over \$82,000.

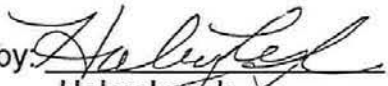
REASON FOR RECOMMENDATION

Elavon, Inc. is the lowest responsible bidder and will provide significant savings for the City.

ACTIONS FOLLOWING APPROVAL

The contract will be prepared and executed, subject to review by the City attorney.

Submitted by:



Haley Lynch
Deputy Finance Director

Recommended by:



Jamie Hughson
Finance Director

SCHEDULE A - SCHEDULE OF FEES

ASSUMPTIONS / Merchant PROFILE

Legal Entity Name	City of Clovis
Business Segment	Services Government
Category Description	Government Services-Not Elsewhere Classified
MCC	9399
Multiple MCCs?	Yes
Locations	4

	Annual Volume	Avg. Ticket	Annual Transactions
VISA	\$6,092,239	\$800.00	7615
MasterCard	\$2,610,960	\$800.00	3264
Discover	\$240	\$50.00	5
Union Pay			0
American Express	\$3,764,926	\$4,150.00	907
JCB & Diners			0
PIN-Debit			0
Checks			0
EBT			0
Total	\$12,468,365	\$1,450.00	11791

Projected Monthly Trans

Volume	Average Ticket
983	\$1,450

TERM

Initial Term of: 5 Year(s) with (REQUIRED): 3 Year(s) Renewal Term

PROCESSING SERVICES AVAILABLE TO COMPANIES GENERALLY

CARD PROCESSING FEES

Pass-Through

All Visa, MasterCard, Discover, UnionPay, and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Servicer Transaction processing fees include:

	%	Per Item (\$)
Visa	0.00%	\$0.000
MasterCard	0.00%	\$0.000
Discover	0.00%	\$0.000
UnionPay	0.00%	\$0.000
PIN-Debit	0.00%	\$0.000

AUTHORIZATION FEES - Servicer

Telecom Method	IP/DIAL
Additional Fee for Telecom	
	Per Authorization Fee
Visa	\$0.300
MasterCard	\$0.300
Discover	\$0.300
UnionPay	\$0.300
PIN Debit	Not Quoted
American Express	\$0.300
Diners	Not Quoted
JCB	Not Quoted
EBT	Not Quoted
Other Card Type	Not Quoted
Frame Relay	Not Quoted
Dial Back-Up for Frame Relay	Not Quoted
Voice (VRU) Authorization	\$0.750
Voice Authorization with Address Verification	\$0.750
Operator-Assist Authorization	\$2.000
Bank Referral Authorization	\$4.000

OTHER TRANSACTION FEES

Bill Payment (PIN-Less Debit)	
PIN Debit Flat Rate (per settled transaction) (Debit Network Switch Fee is billed separately - per authorization)	
AVS Fee (per occurrence)	
ACH Fee (per occurrence)	
ACH Returned Item Fee	(per occurrence)
FedWire Settlement (per occurrence, where available)	
Fedwire requires CFI Approval	
Chargeback Fee (per occurrence)	
Monthly Minimum (per location)	
Monthly Minimum Start Date to be the Effective Date of the PDPA	
Other Fee	
3Delta - Level 3 Solutions	
Setup Fee	
Other Setup Fee	
Monthly Fee	
Per Transaction Fee	
Other Fee	

Per Transaction Fee

Not Quoted
Not Quoted
Not Quoted
Not Quoted
\$20.000
Not Quoted
\$15.000
Not Quoted
Not Quoted
Not Quoted
Not Quoted
Not Quoted
Not Quoted

REPORTING

FOREIGN NETWORK

Using a third party network or gateway below requires Servicer to add an additional fee per authorization. For foreign networks, this is a separate authorization fee, and for gateways, this Servicer fee will be added to the Servicer authorization fee noted in Section IV.

Networks

Foreign Networks:

TSYS Acquiring Solutions (Vital)	
Global (Mapp or NDC)	
Dial	
Debit	Credit
\$0.069	\$0.066
\$0.250	\$0.250
IP	
Debit	Credit
\$0.035	\$0.028
\$0.170	\$0.170
IP SSL	
Debit	Credit
\$0.053	\$0.066
\$0.170	\$0.250

PROFESSIONAL SERVICES

EQUIPMENT/SOFTWARE

Purchase			
Equipment Type	Price/Unit	Monthly Fee	Application
VX520 EMV Terminal	\$421.00		
ICT250 EMV Terminal	\$365.00		
IWL250G (Wireless) w/ Sim	\$753.00	\$19.00	
Magtek uDynamo	\$50.00		Converge Mobile
Mini-Wedge Encrypted	\$82.00		Converge Mobile
VX820 Pin Pad	\$247.00		

Notes: 1) Shipping and handling fees are included in the equipment price. 2) All newly purchased equipment from Servicer is warranted for one year from date of purchase. Servicer will replace defective equipment. Merchant will pay a \$35/unit swap fee for the shipping and handling of the replacement equipment. After the first year, Merchant will be quoted a new equipment cost based on market pricing. 3) Merchant owned equipment is not warranted by Servicer, but Merchant may purchase new equipment at market pricing from Servicer. 4) See additional pricing sheet as needed.

DCC & MCC

ACCOUNT IMPLEMENTATION & MAINTAINENCE FEES

ELECTRONIC GIFT CARDS

BILL PAYMENT PORTAL (BPP) & ENTERPRISE BILLING SOLUTIONS (EBS)

ACCULYNK (INTERNET PIN-BASED DEBIT CARDS SERVICES)

PAYMENT NAVIGATOR SERVICES

CONVERGE SERVICES

PETROLEUM SERVICES

ELECTRONIC CHECK SERVICE:SERVICE LEVEL AND PROCESSING FEES

PROCESSING SERVICES AVAILABLE TO COMPANIES OPERATING IN CERTAIN CATEGORIES

NON-PROCESSING SERVICE AVAILABLE TO COMPANIES GENERALLY

CONVENIENCE FEE AND GOVERNMENT/PUBLIC INSTIUION SERVICE FEES (GPISF)

PCI

Channel: Direct

Start Date:	1/1/2016	
MID Type:	Multi-MID Pricing - Same Owner, Same Address	
MIDS:	6+	
Billing Type:	Monthly	
	IP	NON-IP
Monthly Fee:	\$7.00	\$7.00
Annual Fee:	N/A	N/A

All Merchants must comply with the requirements of the Payment Card Industry Data Security Standards ("PCI DSS"). Elavon requires Level 4 Merchants (determined based on transaction volume) to validate PCI DSS compliance on an annual basis, with initial validation to occur no later than ninety (90) days after account approval. An annual PCI Fee will be charged to Merchants with access to the services of the qualified third party assessor with whom Elavon has a preferred provider relationship. Any Merchant that has not validated PCI DSS compliance within ninety (90) days of account approval, or in subsequent years on or before the anniversary date of account approval, will be charged an additional monthly non-compliance fee of \$45.00 until Elavon is provided with validation of compliance. Merchant may be eligible for Data Breach Coverage following account approval and PCI DSS compliance validation. See the PCI Compliance Program Overview for coverage details and conditions. Unless stated otherwise in the Agreement, these rates are subject to change with a thirty (30) day notification.

Merchant Acknowledgement

Signature: _____

Printed Name: _____

Title: _____

Date: _____

**ELAVON MASTER SERVICES AGREEMENT**

This Master Services Agreement ("**Agreement**") is between Elavon, Inc. ("**Elavon**") and the entity identified as Company in the signature block below ("**Company**"). The Agreement will be effective on the date in Elavon's signature block (the "**Effective Date**"). The Agreement consists of:

- | | |
|--|--|
| <input checked="" type="checkbox"/> This signature page, the General Terms and Conditions, and Appendix 1 – Definitions; | <input type="checkbox"/> Schedule F – Services in Canada; |
| <input checked="" type="checkbox"/> Schedule A – Fees; | <input type="checkbox"/> Schedule G – Services in Puerto Rico; |
| <input checked="" type="checkbox"/> Schedule B – Company Application | <input checked="" type="checkbox"/> Schedule H – Government Terms; |
| <input checked="" type="checkbox"/> Schedule C – Affiliated Entities | <input type="checkbox"/> Schedule I – Electronic Check Services Terms; and |
| <input checked="" type="checkbox"/> Schedule D – Processing Services Terms; | Any other schedules and any applicable Statements of |
| <input type="checkbox"/> Schedule E – SAFE-T Terms; | Work entered into under the Agreement. |

Agreed and accepted

City of Clovis _____,
on behalf of itself and each Affiliated Entity
("Company"):

By: _____

Name: _____

Title: _____

Date: _____

ELAVON

By: _____

Name: _____

Title: _____

Effective Date: _____

If Company is receiving Processing Services under Schedule D to the Agreement, the Member, as designated on the Company Application (attached as Schedule B), agrees to and accepts the Agreement solely as to the terms in Schedule D, Section 1.7.

MEMBER

By: _____

Name: _____

Title: _____

Date: _____

GENERAL TERMS AND CONDITIONS

1. **Defined Terms.** Capitalized terms used in the Agreement will have the meanings stated in Appendix 1.
2. **Scope of Agreement.** The Agreement governs Company's receipt and use of the Services selected by Company in the Company Application. In addition to the terms of the Agreement, Company will comply with the general terms of the Operating Guide, any terms of the Operating Guide applicable to each selected Service, and any Documentation Elavon provides to Company in writing from time to time that is applicable to the Services.
3. **Affiliated Entities.** Company's Affiliated Entities may use the Services so long as they comply with all restrictions, obligations, and requirements imposed on Company. Company will remain fully responsible for any use of the Services by any Affiliated Entities, will cause its Affiliated Entities to comply with the terms and conditions of the Agreement, and will be liable for the acts and omissions of each Affiliated Entity, in each case as though each Affiliated Entity were Company. Affiliated Entities may not enforce the terms of the Agreement against Elavon. The parties may add Affiliated Entities to Schedule C after the Effective Date by substituting a new Schedule C that is in writing and signed by Company and Elavon. Company will promptly notify Elavon in writing if any entity on Schedule C no longer qualifies as an Affiliated Entity that Company allows to use the Services. For any acts or omissions of an Affiliated Entity giving rise to a termination right by Elavon under Section 4.2, Elavon may terminate the Agreement with respect to (i) only such breaching Affiliated Entity, or (ii) Company and all Affiliated Entities. If Elavon terminates the Agreement under Section 4.2 as to Company, the Agreement will terminate with respect to Company and all Affiliated Entities.
4. **Term and Termination**
 - 4.1. **Term.** Unless terminated as provided below, the Agreement will remain in effect for the Initial Term stated in Schedule A. Thereafter, the Agreement will automatically renew for successive Renewal Terms as stated in Schedule A unless terminated as provided below.
 - 4.2. **Termination.**
 - (a) **Non-Renewal.** Either party may terminate the Agreement effective at the end of the Initial Term or any Renewal Term by providing written notice of non-renewal to the other party at least 90 days prior to the expiration of the then current term.
 - (b) **By Either Party for Cause.** Either party may terminate the Agreement if any of the following conditions remain uncured 30 days after the terminating party notifies the other party in writing of the existence of the condition:
 - (i) The other party has failed to pay the party an undisputed amount owed to the party under the Agreement; or
 - (ii) The other party has failed to perform a material obligation under the Agreement.
 - (c) **By Elavon for Cause.** Elavon may terminate the Agreement immediately in writing if any of the following occur:
 - (i) A material adverse change in Company's financial condition;
 - (ii) The commencement of a Bankruptcy Proceeding by or against Company;
 - (iii) Any representation by Company is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at any time during the Term;
 - (iv) Any Payment Network or application of Payment Network Regulations requires Elavon to terminate the Agreement or cease processing Transactions for Company; or
 - (v) Assignment of the Agreement or a Change of Control of Company without Elavon's written consent.
 - (d) **Force Majeure.** Company will have the termination right stated in Section 18.14 if a Force Majeure occurs.



- (c) **Additional Termination Rights.** If Company is receiving Processing Services, Elavon also will have the termination rights set out in Section 1.6 of Schedule D.

4.3. Account Closing.

- (a) Company acknowledges that closing Company's account with Elavon may take up to 30 days following Elavon's receipt of written notice of termination.
- (b) All obligations of a party regarding Transactions serviced prior to termination will survive termination. Company will maintain enough funds in the DDA following termination to cover all Chargebacks and returns (if Company is receiving Processing Services), adjustments, fees, fines, penalties, assessments and charges from the Payment Networks and other amounts due under the Agreement for at least 180 days after termination.

4.4. Early Termination Fee. If Company terminates the Agreement before the end of the Initial Term (except for termination for Elavon's uncured default as stated in Section 4.2(b), termination pursuant to Section 4.2(d), or for discontinuance of the Services as stated in Section 7), Company will immediately pay Elavon an Early Termination Fee. Company acknowledges that the Early Termination Fee is not a penalty, but rather a reasonable estimate of the damages Elavon sustained because of Company's termination of the Agreement before the end of the Initial Term.

4.5. Transition Assistance.

- (a) Subject to Section 4.5(b) and at Company's request, Elavon will provide Company with up to 90 days of Elavon's standard assistance in transitioning Services provided under the Agreement to Company or a provider designated by Company, which transition assistance will begin on the termination date of the Services (or such earlier date following notice of termination as may be requested by Company) (the "**Transition Period**") and will be at no additional cost to Company. Elavon will continue to perform, and Company will continue to pay Elavon, in accordance with the Agreement during any such Transition Period. Company will pay Elavon, at Elavon's then-standard rates, for any services in addition to Elavon's standard transition assistance. Each party will fully comply with all provisions of the Agreement during any Transition Period.
- (b) Elavon will not be obligated to provide transition assistance to Company under Section 4.5(a) if (i) Elavon terminates the Agreement for cause under Sections 4.2(b), (c), or (e), or (ii) Company chooses not to renew the Agreement in accordance with Section 4.2(a).

5. Authorized Users; Access; Security of Passwords and User IDs.

- 5.1. Company will be responsible for the distribution of all passwords and user IDs issued to any Authorized User. Company will ensure that the access granted to each Authorized User to the Services is limited to only the access and information necessary for the Authorized User to perform his or her job functions on behalf of Company. Company will ensure that all Authorized Users will be trained and qualified to access and use the Services in accordance with the terms of the Agreement, the Operating Guide and any Documentation. Company is responsible for its Authorized Users' compliance with the terms of the Agreement, the Operating Guide, and the Documentation, for all acts or omissions of the Authorized Users, and for all use of any user ID and password other than by Elavon or Elavon's third-party contractors.
- 5.2. Company will not, and will ensure that its Authorized Users do not:
 - (a) access or use the Services for any purposes other than for its own internal business purposes (except as authorized by Elavon) as disclosed to Elavon in writing;
 - (b) modify, reverse engineer, disassemble or decompile any part of the Services or Elavon Materials;
 - (c) transmit any data that contains software viruses, time bombs, worms, Trojan horses, spyware, disabling devices, malicious code, or other harmful or deleterious computer code, files or programs to or through the Services;
 - (d) interfere with or disrupt the servers or networks connected to or providing the Services;

- (e) remove, change or obliterate the copyright, trademark or other proprietary protection legends or notices that appear in connection with access to and use of the Services or any Elavon Materials; or
- (f) copy, re-sell, republish, download, frame or transmit the Services or Elavon Materials, including in order to act as a consultant for any third party or, unless otherwise permitted under the Agreement, as a service bureau, outsourcing or application service provider for any third parties, or otherwise allow any third party to use or access the Services.

5.3. Company will be responsible for (1) maintaining the confidentiality and security of Authorized Users' passwords and user IDs, (2) any communications or other uses of the Services that are made using its or its Authorized Users' passwords and user IDs, and (3) any obligation which may result from such use. Company is responsible for changing the user IDs and passwords of its Authorized Users if it believes that any of those user IDs or passwords have been stolen or might otherwise be misused and for disabling any Authorized User's IDs and passwords promptly upon the termination of employment of such Authorized User or the cessation of such Authorized User's need to access the Services. Company will promptly notify Elavon if Company believes the Services or Elavon's databases have been compromised by use of a user ID or password associated with the Services.

6. Fees and Taxes.

6.1. **Compensation.** Company will compensate Elavon for all fees and other amounts due for the Services and Equipment in accordance with Schedule A, any Statement of Work, and any additional application or setup form(s) (including enrollment forms), addenda or schedules mutually agreed upon in writing by Elavon and Company. Such amounts will be calculated and debited from the DDA (or, if applicable and Company is receiving Processing Services, the Reserve Account), once each day or month for the previous day's or month's activity, as applicable, or (if Company is receiving Processing Services) will be deducted from the funds due Company under the Agreement.

6.2. **Research.** Company will pay Elavon at its standard rates for each research item as stated in Schedule A, including research required to respond to any third party or government subpoena, summons, levy, garnishment or required reporting on Company's account.

6.3. **Change of Fees.** Elavon will not amend the fees for the Services for the Initial Term except (i) as stated in Schedule A or (ii) to pass through to Company increases in interchange, assessments or charges, or increased or new fees imposed by a third party (including a Payment Network).

6.4. Other Amounts Owed.

(a) In addition to the amounts described in Sections 6.1 and 6.2 above, Company will promptly pay Elavon for:

- (i) Any fines, penalties, assessments, or charges (including all fines, penalties, assessments, or charges by the Payment Networks as a result of Company's violation of Payment Network Regulations, whether or not such amount is assessed directly against Company), attributable to the Agreement (other than those directly attributable to Elavon's acts or omissions); and
- (ii) if Company is receiving Processing Services, any Chargebacks, returns, adjustments and associated fees.

Elavon may debit these amounts from Company's DDA (or, if applicable and Company is receiving Processing Services, the Reserve Account) by ACH, or, if Company is receiving Processing Services, offset these amounts from funds Elavon otherwise owes to Company. If such offset or ACH debit does not fully reimburse Elavon for the amount owed, Company will promptly pay Elavon such amount upon demand.

(b) Elavon will charge interest on all uncollected amounts owed to Elavon that are more than 30 days past due at a rate no greater than the maximum rate of interest permitted under Laws.

6.5. **Taxes.** Company will pay all taxes and other charges imposed by any governmental authority on the Services and Equipment provided under the Agreement, excluding any taxes based on Elavon's property or net income. If Company is a tax-exempt entity, Company will provide Elavon with an appropriate certificate of tax exemption.

- 6.6. **Demand Deposit Account.** Company will establish and maintain one or more DDAs to facilitate payment of fees to Elavon. Company irrevocably authorizes Elavon and its Affiliates that provide Services under the Agreement to initiate ACH credit and debit entries to the DDA in order to pay the fees and any other amounts that may be due by Company to Elavon under the Agreement, and authorizes Company's depository institution to grant Elavon access to any information or records regarding the DDA reasonably requested by Elavon to debit or credit the DDA and to otherwise exercise Elavon's rights under the Agreement with respect to the DDA. The foregoing authorizations will remain in effect after termination of the Agreement until all of Company's payment obligations to Elavon have been paid in full. Elavon has the right to rely on written instructions submitted by Company requesting changes to the DDA. In the event Company changes the DDA, the ACH authorizations established under this Agreement will apply to the new account, and Company will provide Elavon such information regarding the new DDA as Elavon deems necessary to effect debits from or credits to the DDA as provided under the Agreement. It may take Elavon up to 10 business days after Elavon's receipt of a written notice from Company to reflect in Elavon's system any change to Company's DDA.
7. **Modifications and Discontinuance of Services.** Elavon may modify the Services or particular components of the Services from time to time and will use commercially reasonable efforts to notify Company of any material modifications. If Elavon ceases to make a Service selected by Company generally available to its merchant customers (a "**Discontinued Service**"), Elavon may cease providing such Discontinued Service to Company upon 180 days' advance written notice. If discontinuing the Discontinued Service has a material impact on Company, Company may terminate the Agreement without any obligation to pay the Early Termination Fee by notifying Elavon in writing within 60 days of Company's receipt of Elavon's notice of the Discontinued Service. If Company does not terminate the Agreement within such 60-day period, the Agreement will continue in full force and effect without the Discontinued Service. Elavon will not be liable to Company or to any third party for any modification or discontinuance of the Services as described in this Section 7. Company may request transition assistance from Elavon under Section 4.5 for any Discontinued Service.
8. **Compliance with Laws and Payment Network Regulations.**
 - 8.1. **General.** Elavon and Company will comply with all Laws and Payment Network Regulations applicable to the selected Services.
 - 8.2. **Office of Foreign Assets Control Compliance.** Company acknowledges that Elavon is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or the U.S. Department of the Treasury or any successor thereto.
 - 8.3. **Export Laws Compliance.** Company will comply with all U.S. export Laws governing the export and re-export of hardware, software or technology applicable to the Services and Equipment, including U.S. Department of State International Traffic In Arms Regulations (ITAR), U.S. Foreign Corrupt Practices Act, U.S. Commerce Department's Export Administration Regulations, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and Laws promulgated by OFAC or the U.S. Department of the Treasury or any successor thereto. Company will not, and will not request Elavon to, export, directly or indirectly, any technical data pursuant to the Agreement or any product using any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.
 - 8.4. **Customer Identification.** To help the U.S. Government fight the funding of terrorism and money laundering activities, federal law requires financial institutions and their affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, Company will provide certain information and identifying documents requested by Elavon to allow Elavon to identify Company.
9. **Confidentiality; Data Security and Use.**
 - 9.1. **Confidentiality.**
 - (a) **Confidential Information Generally.** Each party will protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and will not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information except in connection with the performance of its obligations or rights under the Agreement. The Receiving Party acknowledges that any

breach of this Section 9.1 by the Receiving Party may result in irreparable harm to the Disclosing Party for which monetary damages may not provide a sufficient remedy. Therefore, the Disclosing Party may seek both monetary damages and equitable relief with respect to any such breach without any obligation to post bond.

- (b) **Disclosure of Confidential Information.** If the Receiving Party or its agents become legally required or compelled (by any publicly filed and noticed deposition, interrogatory, request for documents, civil subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party if permitted will provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If the Disclosing Party does not obtain a protective order or other remedy, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party is legally required to disclose and to use reasonable efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. Neither party will be obligated to notify the other of the receipt of any non-public or confidential investigative demand, summons, or grand jury subpoena or other similar process that requires confidentiality on the part of the applicable party.
- (c) **Duration of Obligations.** The non-disclosure obligations in this Section 9.1 will continue (i) with respect to Confidential Information that does not constitute a trade secret, for three years following termination, and (ii) with respect to Confidential Information that is a trade secret under Laws, for the longer of three years after termination and such period as the information retains its status as a trade secret under Laws.
- (d) **Obligations on Termination.** At the request of the Disclosing Party upon the termination of the Agreement, the Receiving Party will promptly delete or return to the Disclosing Party all originals and copies containing or reflecting any Confidential Information of the Disclosing Party (other than those required to be retained by Law, or that would be unreasonably burdensome to destroy, such as archived computer records). If a dispute arises between the parties in relation to the Confidential Information or the Agreement, the Receiving Party may retain a copy of such Confidential Information as the Receiving Party reasonably determines is necessary for its defense of the dispute. In all cases, any retained Confidential Information will continue to be subject to the terms of the Agreement.

9.2. Data Security and Use.

- (a) **Security Programs Compliance.** Elavon and Company will each comply with the applicable requirements of the Security Programs.
- (b) **PCI-DSS Attestation.** Company may review Elavon's current PCI-DSS compliance status on the Payment Network websites as available. Elavon will undergo an annual assessment of its compliance with the Security Programs and, if applicable to the Services provided under the Agreement, the Payment Application Data Security Standards. At Company's written request, Elavon will provide to Company a written attestation of Elavon's compliance with the security requirements related to Cardholder Data promulgated by the Payment Card Industry Security Standards Council.
- (c) **Elavon Data Breach.** If Elavon suffers an Elavon Data Breach, then it will follow all Laws and Payment Network Regulations with respect to such Elavon Data Breach including providing the required reporting and forensic audits to the Payment Networks. Elavon will not pass-through or require Company to be liable to Elavon for any fees, fines, penalties, assessments, or charges levied against Elavon by the Payment Networks in connection with an Elavon Data Breach. Unless otherwise required or directed under Law, the Payment Network Regulations, or a Payment Network, Elavon will not (i) contact or inform any Customer of whose data may have been the subject of an Elavon Data Breach of the occurrence of the Elavon Data Breach, or (ii) publicly disclose that information provided by Company to Elavon was the subject in any part of an Elavon Data Breach. If Elavon is legally obligated or the Payment Network Regulations or Payment Networks require Elavon to contact Customers as part of an Elavon Data Breach, Elavon will limit the notices to such Customers to those required by the legal obligation, the Payment Network Regulations, or the Payment Networks, or as approved by Company.
- (d) **Cardholder Data and Transaction Information.**

- (i) Elavon and Company will ensure the security of Cardholder Data and Transaction Information in accordance with all Laws and Payment Network Regulations. Elavon and Company will retain Cardholder Data and Transaction Information for the duration required by Laws and the Payment Network Regulations and thereafter will destroy, in a manner that will render the information unreadable, all such information that is no longer necessary or appropriate to maintain for ordinary business purposes.
- (ii) Company will not disclose Cardholder Data or Transaction Information to any third party, except to a Service Provider, or as otherwise required by Laws and the Payment Network Regulations. Company will not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose. After authorization, Company will retain only the Customer account number, name, and card expiration date if Company has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. If there is a failure or other suspension of Company's business operations, including any Bankruptcy Proceeding, Company will not sell, transfer, or disclose Cardholder Data or Transaction Information to third parties, and Company will (a) return this information to Elavon or the applicable acquirer, or (b) provide acceptable proof of destruction of this information to Elavon.
- (iii) Elavon acknowledges that Company may collect information about Company's Customers as part of a Company sales transaction (e.g., price paid, time, store identifier, SKU information) regardless of the Customer's payment type and not in connection with the Services, and that the Agreement does not restrict Company's retention, use or disclosure of such information even though some of that information may overlap with elements of Transaction Information.
- (iv) Notwithstanding anything in Section 9.1, any Cardholder Data, Transaction Information, and information regarding Company, its principals, Affiliates, or agents included on the Company Application or that Elavon otherwise obtains in connection with the Agreement may be:
 - (1) Used by Elavon and its Affiliates, third-party contractors, agents, and referral partners (a) to provide the Services and related functions to Company and to respond to any further application for Services, (b) for administrative purposes and to maintain Company's account pursuant to the Agreement, and (c) for Elavon's internal fraud and compliance monitoring;
 - (2) Disclosed and shared by Elavon for reporting purposes to credit rating agencies and to the financial institution where the DDA is maintained;
 - (3) Used to enhance or improve Elavon's products or services generally;
 - (4) Used or disclosed by Elavon in the course of any actual or potential sale, reorganization or other change to Elavon's business;
 - (5) Collected, used and disclosed by Elavon as required by Laws (e.g., for tax reporting or in response to a subpoena); and
 - (6) Retained for such periods of time as Elavon requires to perform its obligations and exercise its rights under the Agreement.

Elavon may prepare, use, and share with third parties, aggregated, non-personally identifiable information derived from Transaction Information of all of Elavon's customers or specific segments of Elavon's customers.

10. Assessment and Audit

- 10.1. **Elavon Reports on Internal Controls.** Elavon will engage independent, qualified, external auditors (the "Elavon Auditors") to assess the internal controls and information security measures in place related to the Services ("Internal Controls Assessment"). The Internal Controls Assessment will conform with Laws, applicable Payment Network Regulations and industry standards, including generally accepted auditing standards such as the Statement on Standards for Attestation Engagements Number 16 "Reporting on Controls at a Service Organization" issued by

the Auditing Standards Board of the American Institute of Certified Public Accountants (the "SSAE 16"). The frequency of the Internal Controls Assessment will be consistent with industry standards. Upon Company's written request, but not more frequently than once every 12 months, Elavon will provide a copy of its most recent SSAE 16 SOC 1 report, which will be deemed Elavon's Confidential Information.

10.2. Company Audit. If Elavon reasonably suspects that it is subject to a financial or reputational risk due to Company's acts or omissions, Company authorizes Elavon and its agents to perform an audit or inspection of Company's operations and records to confirm Company's compliance with the Agreement upon reasonable advance notice, during normal business hours, and at Elavon's expense (unless Elavon reasonably determines based on such audit that Company is not in compliance with the Agreement, in which case Company will bear the cost). Company will maintain complete and accurate records of its performance under the Agreement. Company will execute and deliver to Elavon all documents Elavon reasonably deems necessary to verify Company's compliance with Section 8.1.

11. Proprietary Rights. As between Elavon and Company, Elavon retains all right, title and interest in and to the Services, Elavon Materials, Updates, Customizations, and all Intellectual Property Rights in any of the foregoing. Company will not acquire any ownership interest or license rights (except such rights as are expressly stated in the Agreement (including the Operating Guide)) in or to the Services, Elavon Materials, Updates, Customizations, or Intellectual Property Rights in any of the foregoing. If any right, title or interest in and to any Customizations is deemed to vest in Company, Company hereby assigns and agrees to assign to Elavon all worldwide right, title, and interest in and to such Customizations, including all Intellectual Property Rights therein. All rights not otherwise stated in the Agreement are reserved to Elavon. The rights granted to Company under the Agreement are non-exclusive and nothing in the Agreement will limit the ability of Elavon to market, sell, offer for sale, license or otherwise exploit the Services, Elavon Materials, Updates, Customizations or Intellectual Property Rights in any of the foregoing to any third parties or to appoint or authorize any other person or entity to do the same.

12. Representations and Disclaimers

12.1. Elavon Representations. Elavon represents to Company the following as of the Effective Date:

- (a) **Organization.** Elavon is a corporation validly existing and organized under the laws of the state of Georgia with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations.
- (b) **Authority and Power.** Elavon has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Elavon to all provisions of the Agreement and such person is authorized to execute any document and to take any action on Elavon's behalf which may be required to carry out the Agreement. Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Elavon is subject.
- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Elavon's knowledge, threatened, which if decided adversely would impair Elavon's ability to carry on its business substantially as now conducted or which would adversely affect Elavon's financial condition or operations.

12.2. Company Representations. Company represents to Elavon the following as of the Effective Date:

- (a) **Organization and Information.** Company is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Company conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Company Application, the bid process, and enrollment forms, as applicable, and in the assumptions in Schedule A or any other document submitted to Elavon is true and complete and properly reflects the business, financial condition and ownership of Company in all material respects.
- (b) **Authority and Power.** Company has the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Company and each Affiliated Entity to all provisions of the Agreement as if each Affiliated Entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Company that Elavon requires to carry out the Agreement.



Further, the signing and performing in accordance with the Agreement will not violate any Laws or conflict with any other agreement to which Company is subject.

- (c) **No Litigation.** There is no action, suit, or proceeding pending or, to Company's knowledge, threatened, which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would materially and adversely affect Company's financial condition or operations.
- (d) **Business Use.** Company is obtaining and using the Services from Elavon to facilitate lawful business Transactions between Company and its Customers, and using the DDA only for lawful business purposes.

12.3. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, THE SERVICES AND ELAVON MATERIALS ARE PROVIDED "AS IS," AND ELAVON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, ELAVON MATERIALS, EQUIPMENT, SOFTWARE, DOCUMENTATION, AND COMPANY'S USE OF THIRD PARTY SERVICES, EQUIPMENT, SOFTWARE, OR DATA IN CONNECTION WITH THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, SATISFACTORY QUALITY, TITLE, SECURITY, NONINFRINGEMENT, UNINTERRUPTED OR ERROR-FREE USE, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE.

12.4. **Internet Security Disclaimer.** COMPANY ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM AND IS SUBJECT TO INTERRUPTION AND DISRUPTION. TRANSMISSION OF INFORMATION AND DATA VIA THE INTERNET IS OUT OF ELAVON'S CONTROL. ELAVON IS NOT RESPONSIBLE FOR ANY INTERCEPTION OR CORRUPTION OF INFORMATION OR DATA DURING ANY TRANSMISSION OVER THE INTERNET OR ANY RELATED TELECOMMUNICATIONS NETWORK OR AT ANY COMPANY LOCATION OR COMPANY NETWORK ACCESS POINT.

13. Indemnification

13.1. **By Elavon.** Elavon will indemnify and defend Company, its Affiliates, and their respective employees, officers, directors, and agents against losses, damages, liabilities, fines, judgments and expenses (including all reasonable attorneys' fees) (collectively, "**Losses**") in connection with claims, actions, demands or proceedings (made or threatened) brought by a third-party ("**Claims**") arising out of (a) Elavon's breach of the Agreement; (b) Elavon's or its third party contractors' gross negligence or willful misconduct; (c) Elavon's or its third party contractors' violation of Laws or Payment Network Regulations; (d) subject to Section 13.5, Elavon's alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services (but not Equipment) in the form delivered or Company's use thereof (an "Infringement Claim"); or (e) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.

13.2. **By Company.** Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against Losses in connection with Claims arising out of (a) any Transaction processed under the Agreement; (b) Company's breach of the Agreement; (c) all use of any user ID and password other than by Elavon or Elavon's third-party contractors; (d) Company's or its Service Providers' gross negligence or willful misconduct; (e) Company's or its Service Providers' violation of Laws or Payment Network Regulations; (f) any action taken by Elavon with respect to the DDA (and, if Company is receiving Processing Services, the Reserve Account) in accordance with the Agreement; or (g) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers.

13.3. **Exceptions.** The indemnifying party is not required to indemnify the indemnified party for Losses to the extent caused by or resulting from the negligence, gross negligence or willful misconduct of, or breach of the Agreement by, the indemnified party.

13.4. Procedure.

(a) If a Claim is subject to indemnification under the Agreement, the indemnified party will:

- (i) Provide the other party prompt notice of the Claim (provided that any delay in notification will not relieve the indemnifying party of its obligations under this Section 13 except to the extent that the delay materially impairs its ability to fully defend the Claim);

- (ii) Subject to Section 13.4(b), give the indemnifying party the right to exercise exclusive control over the preparation and defense of the Claim, including appeals, negotiations and any settlement or compromise thereof, provided that the indemnifying party will notify the indemnified party in writing of its election regarding the assumption of control of the preparation and defense of such Claim within 15 days following receipt of the indemnified party's written notice of such Claim, but, in any event, no later than 10 days before the date on which any written response to a complaint, summons, or other legal filing is due; and
- (iii) Provide such assistance in connection with the defense and settlement of the Claim as the indemnifying party may reasonably request, at the indemnifying party's expense. The indemnifying party will not enter into any settlement that imposes any liability or obligation on the indemnified party, or contains any admission or acknowledgement of wrongdoing (whether in tort or otherwise), without the indemnified party's prior written consent.

(b) The indemnified party may join in the defense, with its own counsel, at its own expense.

13.5. Infringement Claims.

- (a) Subject to Elavon's defense obligations as provided in this Section 13, indemnification for any Infringement Claim will be limited to the payment of the final award of damages assessed against Company resulting from such Infringement Claim in a final judgment by a court of competent jurisdiction, including awarded costs, or any amount in settlement or compromise authorized by Elavon in writing.
- (b) If any part of the Services or the use of the Services becomes, or in Elavon's opinion is likely to become, the subject of an Infringement Claim, and as a result of such Infringement Claim Company's use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either, and in addition to defending Company and paying the final amount of damages as provided for in this section, (i) obtain a license for Company to continue using the alleged infringing component(s) of the Services; (ii) modify the alleged infringing component(s) of the Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing component(s) of the Services with compatible, functionally equivalent, and non-infringing component(s). Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination.
- (c) Elavon will have no liability for any Infringement Claim to the extent caused by (i) access to or use of the Services other than as specified under the Agreement and the related Documentation, (ii) combination or use of the Services with non-Elavon products or services (whether or not provided to Company by Elavon), (iii) any hardware, devices, software, services or other resources not provided by Elavon, (iv) failure or refusal by Company to install, implement or use any Update or correction provided by Elavon, (v) modification or alteration of the Services by anyone other than Elavon without Elavon's prior written consent, or (vi) Company's goods or services.
- (d) THIS SECTION 13.5 SETS FORTH THE EXCLUSIVE REMEDY OF COMPANY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO ANY INFRINGEMENT CLAIMS.

14. Limitation of Liability.

- 14.1. **Excluded Damages.** Except for a party's breach of its confidentiality obligations in Section 9.1 (excluding a Data Breach, which is subject to Section 14.3), neither party or its agents, officers, directors, or employees will be liable to the other party for indirect, exemplary, punitive, special, or consequential damages in connection with the Agreement under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise).

14.2. General Limitation. Company acknowledges that fees for the Services are very small in relation to the funds conditionally credited to Company for Transactions, and, consequently, Elavon's willingness to provide these Services is based on the liability limitations contained in the Agreement. Therefore, except for Elavon's breach of its confidentiality obligations in Section 9.1 and Elavon's indemnification obligations in Section 13 (excluding in each case a Data Breach, which is subject to Section 14.3), Elavon's aggregate liability for any Losses, regardless of the form of action, arising out of the Agreement or Elavon's performance or non-performance of Services under any theory of law or equity (whether in contract, tort, negligence, strict liability, by statute, or otherwise), will not exceed, in the aggregate, an amount equal to the lesser of (a) the sum of fees paid by Company to Elavon during the three months immediately preceding the event giving rise to the Losses, exclusive of fees and variable costs incurred by Elavon to process Transactions such as Interchange costs, assessments, charges, and fees imposed by a third party, and (b) the sum of fifty thousand dollars (\$50,000).

14.3. Data Breach Limitation. Notwithstanding the limitations set forth in Section 14.2 and the disclaimers in Section 14.1, Elavon will be liable to Company for Company's documented and incurred Elavon Data Breach Losses, up to an aggregate amount not to exceed six months' average fees paid to Elavon by Company pursuant to the Agreement. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, SECTION 9.2(C) AND THIS SECTION 14.3 SET FORTH COMPANY'S EXCLUSIVE REMEDY AND THE SOLE AND COMPLETE LIABILITY OF ELAVON WITH RESPECT TO DAMAGES, PENALTIES, COSTS, EXPENSES, OR LOSSES ARISING FROM A DATA BREACH.

15. Purchased Equipment. Elavon will ship to Company the Purchased Equipment described in Schedule A, any Statement of Work, additional application, setup, or order forms, or any addenda or schedules mutually agreed upon in writing by Elavon and Company for the purchase price stated thereon. Company has no right to cancel an order for Purchased Equipment. Unless otherwise agreed by the parties, Company will be responsible for all shipping costs, insurance, import and export duties and similar taxes and amounts. To the extent assignable, Elavon will assign to Company any applicable third party warranties Elavon receives with respect to the Purchased Equipment.

16. Third-Party Vendors.

16.1. Company Service Providers and Company Resources.

- (a) Company may want to use a Service Provider to assist with Transactions. Company will cause each Service Provider and applicable Company Resource to undergo testing, approval and certification by Elavon before Company uses such Service Provider or applicable Company Resource in connection with accessing or using the Services. Company will ensure that each Service Provider or applicable Company Resource maintains certification and compatibility with the Services and that each Service Provider and applicable Company Resource is fully compliant with all Laws, Payment Network Regulations, and Security Programs. Failure of Company's systems, including Company's point-of-sale system or property management system, or any Service Provider systems to maintain certification under this section or to be compatible and function with the most recent version of the Services will excuse Elavon from all liability and all of its obligations under the Agreement to the extent that Elavon's provision of the Services is impaired by such failure.
- (b) Company is responsible for any violations of the Agreement that result from the acts or omissions of Company's Service Providers and any other person who, with or without Company's consent or cooperation, obtains access to Transaction Information from Company or access to systems under Company's or Service Provider's control (excluding acts or omissions to the extent attributable to Elavon's breach of the Agreement, gross negligence, or willful misconduct).
- (c) Elavon is not responsible for Service Providers or for the products or services offered by Service Providers, nor is it responsible for any Transaction until Elavon receives complete data for the Transaction in the format required by Elavon.
- (d) Elavon may terminate a Service Provider's access to or ability to integrate with Elavon's products, services, and systems at any time after Elavon provides Company 90 days' written notice of intent to terminate such Service Provider, or immediately without prior notice if the termination results from:
 - (i) The Service Provider's breach of any Laws or Payment Network Regulations,

- (ii) The requirement of any court order or Payment Network or application of Payment Network Regulations to the Services,
- (iii) Elavon's reasonable determination that the Service Provider poses an unacceptable security risk to Elavon, Company or any Payment Network, or
- (iv) The expiration or termination of any agreement between Elavon and the Service Provider specific to certification to Elavon with respect to the Services.

16.2. Elavon Third-Party Contractors. Elavon may use third-party contractors in connection with the performance of its obligations under the Agreement. Elavon will be responsible for the performance of its obligations hereunder notwithstanding any use of or delegation of any responsibility to any Elavon third-party contractor. Elavon is responsible for any violations of the Agreement that result from the acts or omissions of its third-party contractors.

17. Professional Services.

- 17.1.** Elavon will provide the Professional Services to Company as mutually agreed upon by the parties in a Statement of Work. Each executed Statement of Work will be deemed incorporated into the Agreement and will identify in reasonable detail the Professional Services that Elavon will perform, including: (a) the specific deliverables and services to be provided by Elavon; (b) any responsibilities of the parties in addition to those in the Agreement; (c) the fees and costs that Company is responsible for under the Statement of Work; and (d) any payment terms that are different from or in addition to the payment terms in the Agreement. As between Elavon and Company, Elavon will own all improvements to the Services made by or on behalf of Company that arise out of the Professional Services.
- 17.2.** Elavon will perform the Professional Services in a workmanlike manner. Company will notify Elavon of any failure to so perform within 10 days following the completion of the applicable Professional Services. Elavon's entire liability and Company's sole remedy for Elavon's failure to so perform will be for Elavon to, at its option, (a) use reasonable efforts to correct such failure, or (b) terminate the applicable Statement of Work and refund the portion of any fees received that corresponds to such failure to perform.
- 17.3.** Company will (a) provide sufficient, qualified, knowledgeable personnel capable of (i) making timely decisions necessary to allow Elavon to perform the Professional Services, and (ii) participating in the project and assisting Elavon in rendering the Professional Services; (b) if applicable, provide Elavon with reasonable access to Company's facilities during Company's normal business hours and otherwise as Elavon reasonably requests to enable Elavon to perform the Professional Services; (c) provide Elavon with working space and any other services and materials which may reasonably be necessary in connection with the performance of the Professional Services; and (d) perform such other duties and tasks as Elavon reasonably requests to facilitate Elavon's performance of the Professional Services. Company acknowledges that: (x) Elavon's ability to perform the Professional Services is conditioned upon Company's timely performance of Company's obligations and (y) the performance of these Company obligations is material to Elavon's ability to commence and proceed with the Professional Services.

18. General Provisions.

- 18.1. Entire Agreement.** The Agreement (including the Operating Guide, all appendices, schedules, attachments, exhibits, addenda and other documents incorporated by reference) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other agreements, written or oral, are superseded by the Agreement. If a conflict exists between the documents comprising the Agreement, the following order of priority will apply:
- (a) Any schedules mutually agreed upon by the parties, with respect to the subject matter thereof;
 - (b) General Terms of Service and Appendices;
 - (c) The Operating Guide;
 - (d) Any signed Statement of Work; and
 - (e) Any Documentation provided to Company in writing by Elavon.

- 18.2. **Jurisdiction and Venue; Governing Laws.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the laws of the state of Georgia, without giving effect to its choice-of-law rules. All performances and Transactions under the Agreement will be deemed to have occurred in the state of Georgia, and Company's entry into and performance of the Agreement will be deemed to be the transaction of business within the state of Georgia. Each party hereby submits to the exclusive jurisdiction (other than for collection actions by Elavon relating to amounts owed by Company under the Agreement) of the courts of the state of Georgia (Fulton County) or the United States District Court for the Northern District of Georgia and waives any objection to venue with respect to the actions brought in those courts. Elavon and Company each waive any right to trial by jury in any action or proceeding relating to the Agreement.
- 18.3. **Exclusivity.** During the Term, Company will not enter into an agreement with any other entity that provides services similar to those Services Company has selected to receive from Elavon under the Agreement without Elavon's written consent.
- 18.4. **Construction.** The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. Each provision is to be construed as if the parties drafted it jointly. The word "day" will mean "calendar day", unless specifically stated otherwise.
- 18.5. **Assignability.** Company will not assign the Agreement, directly, by operation of law, or by Change of Control of Company, without Elavon's prior written consent. If Company nevertheless assigns the Agreement without Elavon's consent, the Agreement will be binding on both the assignee and Company. Elavon will not transfer or assign the Agreement without Company's prior written consent, except for (i) an assignment or delegation to an Affiliate of Elavon, or (ii) an assignment or delegation to any entity into or with which Elavon will merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- 18.6. **Notices.** Any written legal notice to the other party will be deemed received upon the earlier of (a) actual receipt, (b) five business days after being deposited in the U.S. mail, return receipt requested, or (c) two business days after being deposited with a nationally recognized overnight carrier. Such notices will be addressed to Company's address on the Company Application or the last address shown on Elavon's records, or to Elavon at 7300 Chapman Highway, Knoxville, Tennessee 37920, with a copy to Two Concourse Parkway, Suite 800, Atlanta, GA 30328, Attn: General Counsel, or such other addresses as Elavon may designate in writing.
- 18.7. **Bankruptcy.** Company will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Company. Company will include Elavon on the list and matrix of creditors as filed with the bankruptcy court, whether or not a claim may exist at the time of filing. Company acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Company, and, as such, cannot be assumed or assigned in the event of Company's bankruptcy. Company will be responsible to Elavon for any damages suffered by, and expenses incurred by, Elavon due to a Company Bankruptcy Proceeding.
- 18.8. **Telephone Recording.** For quality assurance and training purposes, Company authorizes Elavon to monitor and record customer service telephone conversations at any time, subject to Laws and applicable disclosures if required.
- 18.9. **Amendments.** Except as otherwise stated in the Agreement (including in Section 6.3), amendments to the Agreement will be in writing and signed by the parties. Notwithstanding the foregoing, Elavon may amend or modify the Agreement, to the extent such changes are required by changes in the Payment Network Regulations or other Laws, upon written notice to Company. Elavon will inform Company of such a change in the Payment Network Regulations or Laws in a periodic statement or other written notice, and such change will become effective at least 30 days after the issuance of the notice.
- 18.10. **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby. None of the failure to exercise, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor will such amend the Agreement. All waivers requested by a party must be signed by the waiving party.

- 18.11. Independent Contractors.** Elavon and Company will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically stated in the Agreement. The Agreement has been entered into solely for the benefit of the parties to the Agreement and is not intended to create an interest in any third party except where explicitly stated otherwise.
- 18.12. Survival.** All of the obligations of each party that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including Sections 3, 4.3, 4.4, 4.5, 5, 6, 8, 9, 12, 13, 14, 16, 18.2, and 18.12, will survive and remain binding upon and for the benefit of the parties.
- 18.13. Counterparts; Electronic Delivery.** The Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which, taken together, will constitute one and the same agreement. Signed counterparts may be delivered by fax or electronic means (e.g., .pdf documents via e-mail), and will constitute signed originals.
- 18.14. Force Majeure.** Neither party will be considered in default in performance of its obligations to the extent such performance is delayed by Force Majeure affecting such party's ability to perform. A "Force Majeure" means an act of God, natural disaster, war, act of terrorism, civil disturbance, action by governmental entity, strike, and other cause beyond such party's reasonable control. If a Force Majeure interrupts Elavon's provision of any Services, Company will continue to pay Elavon the fees for the Services owed under the Agreement and Elavon will make all reasonable efforts to restore such Services. If the Force Majeure continues for a more than 14 days, then Company may, upon notice to Elavon, as its sole and exclusive remedy, abate payment to Elavon to the extent Services are not performed and terminate the Agreement.
- 18.15. Business Continuity.** Elavon will maintain and adhere to business continuity plans that are commercially reasonable within the industry for the Services.
- 18.16. Tribal Governments.** If Company qualifies as a federally recognized or acknowledged tribal government or an instrumentality thereof, then Company expressly and irrevocably provides a limited waiver of its sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, exercise of contempt powers or otherwise) brought by Elavon relative to disputes between the Elavon and Company under the Agreement in the exclusive jurisdiction set forth in Section 18.2. Without prejudice to the limited waiver of sovereign immunity provided in the Agreement, no other waiver of Company's sovereign immunity from suit may be implied from any action or document. Company waives any requirement for Elavon to exhaust tribal court remedies that might otherwise require, as a matter of law or comity, that a dispute be heard first in the tribal court of Company. The waivers and consents described in this Section 18.16 will inure to the benefit of the parties hereto. The parties will be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of the obligation to exhaust tribal court remedies and the consents to jurisdiction contained in this Section 18.16 are irrevocable and will survive termination of the Agreement. Company covenants that it has obtained and will maintain in effect all authorizations and consents necessary to grant the waiver of sovereign immunity and the obligations to exhaust tribal court remedies contained herein.

APPENDIX 1 – DEFINITIONS

“ACH” means Automated Clearing House, The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

“ACH Network” means the funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.

“ACH Rules” means the NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.

“Affiliated Entity” means (i) an Affiliate of Company, or (ii) a person or entity operating a franchise under one or more of Company’s brands pursuant to a written franchise agreement with Company whereby the franchisee consistently displays external identification prominently identifying itself with Company’s trademarks; in each case as listed on Schedule C or an exhibit to an applicable schedule mutually agreed upon by Company and Elavon.

“Affiliates” means entities affiliated under the majority ownership or control of, under common ownership or control with, or which own or control, a party.

“Authorized Users” means Company’s employees or contractors designated by Company to access and use the Services.

“Bankruptcy Proceeding” means, with respect to an entity, (i) that the entity or any subsidiary of such entity will: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file or be subject to a petition seeking to take advantage of any other applicable state or federal laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such entity or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable state or federal laws; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding will be commenced against the entity or any subsidiary of such entity in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (x) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (y) the appointment of a trustee, receiver, custodian, liquidator or the like of such entity or of all or any substantial part of the assets, domestic or foreign, of such entity or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

“Cardholder” means the individual in whose name a Payment Device has been issued and any authorized user of such Payment Device.

“Cardholder Data” has the meaning stated in the Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS) Glossary of Terms, Abbreviations, and Acronyms.

“Change of Control” means with respect to a party, (a) a merger or consolidation of such party with or into another entity, or the merger of another party with or into such party or any other transaction or series of transactions, with the effect that the equity holders of such party immediately prior to such transaction hold 50% or less of the total voting power entitled to vote in the election of directors, managers, or trustees of the surviving entity; or (b) any person or group acquires beneficial ownership of a majority interest of the voting power or voting capital or other equity interest of such person.

“Chargeback” means a Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

“Company” has the definition set out in the first page of the Agreement.

“Company Application” means the Company Application attached as Schedule B and any additional document containing information regarding Company’s business that is submitted to Elavon in connection with Company’s request for Services, including documents submitted by Company as a part of the bid process, if applicable.



“Company Resources” means all equipment, communications devices, databases, services, systems and other resources that Company maintains or operates in Company’s or its third party hosting provider’s locations and which enable Company to access and use the Gateway Services or SAFE-T Services.

“Confidential Information” means all data and information, regardless of the form or media, relating to the business of the Disclosing Party of which the Receiving Party becomes aware as a consequence of, or through, the performance of its obligations under the Agreement, which has value to the Disclosing Party and is not generally known by its competitors, which is reasonably identified as confidential at the time of disclosure or which, under the circumstances surrounding disclosure, ought to be reasonably considered as confidential, including technical information, drawings, engineering data, performance specifications, cost and price information (except as provided otherwise in the Agreement), and other information, data and reports, and the terms and conditions of the Agreement. Confidential Information does not include any data or information which (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) has become generally known to the public through no wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality running directly or indirectly to the other party; or (iv) is independently developed by the Receiving Party without use, directly or indirectly, of the Confidential Information received from the Disclosing Party. Cardholder Data and Transaction Information are not Confidential Information under this definition, and are addressed in [Section 9.2\(d\)](#).

“Credit Card” means a card or device bearing the symbol of any Credit Card Association and associated with a revolving line of credit that can be used to purchase goods and services from Company or to pay an amount due to Company.

“Credit Card Associations” means (i) Visa; (ii) MasterCard; (iii) American Express Travel Related Services Company, Inc.; (iv) Discover Network; (v) Diners Club International Ltd.; (vi) JCB International Co., Ltd.; (vii) China UnionPay Co., Ltd; and (viii) any other organization or association that hereafter contracts with Elavon to authorize, capture, and settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

“Customer” means a client of Company who elects to conduct a payment Transaction with Company through presentation of a Payment Device (including a Cardholder).

“Customizations” means any works of authorship, work product, and any invention, process, method, development, design, schematic or technical information, whether patentable or not, including documentation, software or enhancements, improvements, alterations, or derivatives of the Services developed by Elavon, either alone or jointly with others, in connection with the Agreement.

“Data Breach” means unauthorized access to, use, disclosure or exfiltration of any Cardholder Data or Transaction Information provided by Company and received by Elavon in connection with Company’s use of the Services under the Agreement.

“DDA (Demand Deposit Account)” means the commercial checking account at an ACH participating financial institution designated by Company to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and other payments due under the Agreement.

“Debit Card” means a card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Company or to pay an amount due to Company by an electronic debit to the Cardholder’s designated deposit account. A “Debit Card” includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.

“Disclosing Party” means the party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).

“Discover” means DFS Services LLC.

“Discover Network” means the payment network operated and maintained by Discover.

“Documentation” means the Elavon standard written description for the Services, as applicable, that is delivered to Company under the Agreement, including user manuals and best practices guides, as may be amended by Elavon from time to time, but not including marketing materials, proposals, demonstrations or other promotional information.



"Early Termination Fee" means an amount equal to the sum of: (i) the greater of (A) the total fees paid by Company during the 12 months immediately prior to termination, and (B) the total fees that would be payable by Company during the 12 months immediately following termination (based, with respect to any per-Transaction fees, on Projected Monthly Transaction Volume), as reflected on Schedule A; and (ii) any up-front incentives afforded to Company.

"EBT Card" means a card used for electronic benefits transfers.

"ECS (Electronic Check Services)" means the service offering by Elavon pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.

"ECS Association" means NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or demand drafts or other legal replacements or substitutes for a paper check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association Elavon uses in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.

"EFT Networks" means (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes Elavon or a third party designated by Company to authorize, capture, and settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

"Effective Date" means the date stated in Elavon's signature block on the signature page of the Agreement.

"Elavon" means Elavon, Inc., a Georgia corporation. Elavon is a registered member service provider of each Member. Elavon may also be referred to as "Servicer" in the Agreement, the Operating Guide or other documents provided to Company in connection with the Services.

"Elavon Data Breach" means a Data Breach that (i) originated within data operating systems controlled by Elavon, (ii) occurred due to a breach of the Agreement by Elavon, (iii) was not attributable to any act or omission of Company or its Service Providers, and (iv) does not relate to any Company provided data in user defined fields not required by Elavon or used to perform the Services.

"Elavon Data Breach Losses" means (i) any fine, penalty, assessment, or charge levied by any Payment Network or regulatory authority against Company, and paid by Company, due to an Elavon Data Breach; provided that, prior to any Payment Network or regulatory authority's finalization of any fine, penalty, assessment, or charge for which Company will seek recovery from Elavon, Company obtains for Elavon the opportunity to discuss and attempt to negotiate such fine, penalty, assessment or charge with the applicable Payment Network or regulatory authority, (ii) amounts paid by Company to third parties to reimburse them for their direct losses resulting from or attributable to an Elavon Data Breach, to the extent Company is required by Laws (including by a statutory or contractual obligation or court order) to make such payments (excluding amounts paid under clause (i) above), and (iii) Company's direct costs incurred in providing 12 months of credit monitoring to Cardholders affected by an Elavon Data Breach involving unauthorized access to unencrypted full primary account numbers (PANs) or social security numbers.

"Elavon Materials" means the specifications, documentation (including Documentation), application programming interfaces (APIs) and other interfaces, nonpublic or proprietary data import routines, sample code and materials provided to Company to enable Company to perform its obligations or exercise its rights under the Agreement, including integration to the Services.

"Electronic Gift Card (EGC)" means a special stored value card provided by or on behalf of Company that is redeemable for merchandise, services or other Transactions.

"Equipment" means Purchased Equipment and other devices, equipment and hardware provided to Company under the Agreement.

"Force Majeure" means has the meaning stated in Section 18.14.

"Gateway Services" means the hosted gateway services provided by Elavon, as further described in the Operating Guide.

"Initial Term" has the meaning stated in Schedule A.



"Intellectual Property Rights" means worldwide patents, trade secrets, copyrights, trademarks, service marks, trade names, and all other intellectual property rights and proprietary rights, including all rights or causes of action for infringement or misappropriation of any of the foregoing.

"Interchange" means the clearing and settlement system for Visa, MasterCard and, where applicable, Discover Credit Cards and Debit Cards, where data is exchanged between Elavon and the Issuer through the applicable Payment Network.

"Internal Controls Assessment" has the meaning stated in Section 10.1.

"Issuer" means the financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

"Laws" means all applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.

"MasterCard" means MasterCard International Incorporated.

"Member" means the sponsoring Member designated on the Company Application or on a particular schedule, as applicable. Elavon may change any Member at any time and will provide Company notice of the change.

"NACHA" means the National Automated Clearing House Association, which establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.

"Operating Guide" means Elavon's Operating Guide (formerly the "Merchant Operating Guide" or "MOG"), located at www.merchantconnect.com (or such other website that Elavon may specify), that prescribes rules and procedures governing Transactions and Company's use of the Services. Elavon may amend the Operating Guide from time to time, which amendments will be effective upon notice to Company.

"Payment Device" means any device or method used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device or method, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account.

"Payment Network" means any Credit Card Association, EFT Network, ECS Association or automated clearing house association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device or PayPal Payment Device (as defined in the Operating Guide) or operates a network on which a Payment Device is processed.

"Payment Network Regulations" means the rules, operating regulations, guidelines, specifications and related or similar requirements of any Payment Network.

"PCI-DSS" means the Payment Card Industry Data Security Standards.

"POS Device" means a terminal, software or other point-of-sale device at a Company location that conforms to the requirements established from time to time by Elavon and the applicable Payment Network.

"Processing Services" means Services other than Gateway Services, SAFE-T Services, and Professional Services.

"Professional Services" means the work Elavon performs for Company in connection with the installation or implementation of the Services, as more fully described in a Statement of Work.

"Projected Monthly Transaction Volume" means the projected monthly Transaction volume stated in Schedule A.

"Purchased Equipment" means the devices, equipment and hardware purchased by Company from Elavon under the terms of the Agreement.

"Receiving Party" means the party receiving Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).

"Renewal Term" has the meaning stated in Schedule A.

"Reserve Account" means the ledger account established by Elavon on its books and records reflecting a contingent payment obligation from Elavon to Company.



"SAFE-T Services" means the integrated security services provided by Elavon, as further described in Exhibit E.

"Security Programs" means the PCI-DSS, including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI-DSS regulations of Discover Network, and the security programs of any other Payment Network, and any modifications to, or replacements of, such programs that may occur from time to time.

"Service Provider" means any entity that stores, processes, transmits or accesses Cardholder Data or Transaction Information on behalf of Company or that provides software to Company for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as a third-party contractor of Elavon performing Elavon's obligations under the Agreement.

"Services" means the services Elavon provides to Company pursuant to the Agreement as designated by Company on the Company Application, or as Professional Services, and any additional services, software, and hardware Elavon provides pursuant to a schedule or an addendum to the Agreement, mutually executed by the parties in accordance with the terms of the Agreement.

"SSAE 16" has the meaning stated in Section 10.1.

"Statement of Work" means a statement of work for Professional Services that references the Agreement and is executed by the parties.

"Term" means the Initial Term and any Renewal Term.

"Transaction" means any action between Company and a Cardholder using a Payment Device that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).

"Transaction Information" means any data or information resulting from an action between a Cardholder using a Payment Device and a Company that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return). Transaction Information includes payment processing-related transactional information that may be collected or stored by Elavon, including the price paid for products or services, date, time, approval, unique transaction number, store identifier, and Customer bank information relating to a Transaction.

"Transaction Receipt" means the paper or electronic record evidencing the purchase of goods or services from, or payment to, a Company by a Cardholder using a Payment Device.

"Transition Period" has the meaning stated in Section 4.5(a).

"Updates" means all updates, revisions, patches, fixes, new releases, and other improvements or changes to any Services provided to Company under the Agreement.

"U.S." means the United States of America.

"Visa" means Visa U.S.A., Inc.

SCHEDULE A

FEES

[Separately provided]

SCHEDULE B
COMPANY APPLICATION

[Separately provided]



SCHEDULE C
AFFILIATED ENTITIES

Check one:

- ☒ Company named on page 1 only, and all locations will operate under Tax ID Number _____.
- ☐ Company named on page 1, with Tax ID Number _____ and the following Affiliates or franchisees (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

Name

Tax ID Number

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

COMPANY, on behalf of itself and each of the Affiliated Entities identified above: **ELAVON, INC.**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

(Schedule C "Effective Date")

SCHEDULE B - COMPANY APPLICATION (LARGE RELATIONSHIP)

COMPANY INFORMATION			
CORPORATE NAME (AS DESCRIBED IN THE AGREEMENT-INDIVIDUAL DBA'S WILL BE OBTAINED DURING IMPLEMENTATION): City of Clovis			
CONTACT NAME: Haley Lynch		PHONE #:	
ADDRESS (NO PO BOX): 1033 Fifth Street		DBA FAX #:	
ADDRESS 2:		FED TAX ID:	
♦ CITY: Clovis	♦ STATE/PROVINCE: CA	♦ ZIP/POSTAL CODE: 93612	♦ INCORPORATION DATA: STATE/PROVINCE ID YEAR
♦ BUSINESS COUNTRY OF ORIGIN (HEADQUARTERED): USA			
♦ GEOGRAPHY FOOTPRINT (ALL COUNTRIES LICENSED TO DO BUSINESS): USA,			
♦ BUSINESS SCOPE OF OPERATIONS (TOTAL NUMBER OF LOCATIONS IN ALL COUNTRIES INCLUDING USA): 1			
PRIMARY WEBSITE:			
PRINCIPAL 1 INFORMATION			
<input checked="" type="checkbox"/> BENEFICIAL OWNER: PERCENTAGE OF OWNERSHIP _____ %		<input type="checkbox"/> AUTHORIZED SIGNER	
<input type="checkbox"/> RESPONSIBLE PARTY			
♦ FIRST NAME:	♦ MIDDLE NAME:	♦ LAST NAME:	♦ SSN#:
♦ HOME ADDRESS:			♦ DOB:
♦ CITY:	♦ STATE/PROVINCE:	♦ ZIP/POSTAL CODE:	♦ HOME PHONE #:
♦ PRIMARY IDENTIFICATION DOCUMENT:		♦ DOCUMENT ISSUING AGENCY:	
♦ DOCUMENT #	♦ ISSUE DATE:	♦ EXPIRY DATE	
PRINCIPAL ADDRESS MATCHES THE ADDRESS ON THE PRIMARY IDENTIFICATION DOCUMENT ABOVE UNLESS OTHERWISE NOTED.			<input type="checkbox"/> ALTERNATE DOCUMENT INCLUDED IF NO ADDRESS MATCH
INDIVIDUAL ID EXEMPTION CLASS:			
SOLE PROPRIETORS ONLY:			
♦ OCCUPATION:		♦ EMPLOYER (OR DBA):	
♦ COUNTRY OF PERMANENT RESIDENCE:		♦ COUNTRY(S) OF CITIZENSHIP:	
PRINCIPAL 2 INFORMATION			
<input type="checkbox"/> BENEFICIAL OWNER: PERCENTAGE OF OWNERSHIP _____ %		<input type="checkbox"/> AUTHORIZED SIGNER	
<input type="checkbox"/> RESPONSIBLE PARTY			
♦ FIRST NAME:	♦ MIDDLE NAME:	♦ LAST NAME:	♦ SSN#:
♦ HOME ADDRESS:			♦ DOB:
♦ CITY:	♦ STATE/PROVINCE:	♦ ZIP/POSTAL CODE:	♦ HOME PHONE #:
♦ PRIMARY IDENTIFICATION DOCUMENT:		♦ DOCUMENT ISSUING AGENCY:	
♦ DOCUMENT #	♦ ISSUE DATE:	♦ EXPIRY DATE	
PRINCIPAL ADDRESS MATCHES THE ADDRESS ON THE PRIMARY IDENTIFICATION DOCUMENT ABOVE UNLESS OTHERWISE NOTED.			<input type="checkbox"/> ALTERNATE DOCUMENT INCLUDED IF NO ADDRESS MATCH
INDIVIDUAL ID EXEMPTION CLASS:			
PRINCIPAL 3 INFORMATION			
<input type="checkbox"/> BENEFICIAL OWNER: PERCENTAGE OF OWNERSHIP _____ %		<input type="checkbox"/> AUTHORIZED SIGNER	
<input type="checkbox"/> RESPONSIBLE PARTY			
♦ FIRST NAME:	♦ MIDDLE NAME:	♦ LAST NAME:	♦ SSN#:
♦ HOME ADDRESS:			♦ DOB:
♦ CITY:	♦ STATE/PROVINCE:	♦ ZIP/POSTAL CODE:	♦ HOME PHONE #:
♦ PRIMARY IDENTIFICATION DOCUMENT:		♦ DOCUMENT ISSUING AGENCY:	
♦ DOCUMENT #	♦ ISSUE DATE:	♦ EXPIRY DATE	
PRINCIPAL ADDRESS MATCHES THE ADDRESS ON THE PRIMARY IDENTIFICATION DOCUMENT ABOVE UNLESS OTHERWISE NOTED.			<input type="checkbox"/> ALTERNATE DOCUMENT INCLUDED IF NO ADDRESS MATCH
INDIVIDUAL ID EXEMPTION CLASS:			
PRINCIPAL 4 INFORMATION			
<input type="checkbox"/> BENEFICIAL OWNER: PERCENTAGE OF OWNERSHIP _____ %		<input type="checkbox"/> AUTHORIZED SIGNER	
<input type="checkbox"/> RESPONSIBLE PARTY			
♦ FIRST NAME:	♦ MIDDLE NAME:	♦ LAST NAME:	♦ SSN#:
♦ HOME ADDRESS:			♦ DOB:
♦ CITY:	♦ STATE/PROVINCE:	♦ ZIP/POSTAL CODE:	♦ HOME PHONE #:
♦ PRIMARY IDENTIFICATION DOCUMENT:		♦ DOCUMENT ISSUING AGENCY:	
♦ DOCUMENT #	♦ ISSUE DATE:	♦ EXPIRY DATE	
PRINCIPAL ADDRESS MATCHES THE ADDRESS ON THE PRIMARY IDENTIFICATION DOCUMENT ABOVE UNLESS OTHERWISE NOTED.			<input type="checkbox"/> ALTERNATE DOCUMENT INCLUDED IF NO ADDRESS MATCH
INDIVIDUAL ID EXEMPTION CLASS:			

RELATIONSHIP PARAMETERS			
WHEN ANY AFFILIATED ENTITIES WILL BE COVERED BY THE AGREEMENT, ENTER THE ENTITY NAME(S) AND FEDERAL TAX ID(S) ON SCHEDULE C			
MEMBER:	<input checked="" type="checkbox"/> ELAVON, INC. <input type="checkbox"/> U.S. BANK NATIONAL ASSOCIATION <input type="checkbox"/> KEY BANK, NATIONAL ASSOCIATION (IF SELECTED, THEN ALL REFERENCES TO ELAVON IN THE AGREEMENT SHALL MEAN KEY MERCHANT SERVICES, LLC, A JOINT VENTURE BETWEEN KEY BANK, NATIONAL ASSOCIATION AND ELAVON, INC.)		
BUSINESS/ ORGANIZATION TYPE:	<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> PUBLIC CORPORATION</div> <div style="width: 50%;"><input type="checkbox"/> CLOSELY HELD CORP</div> <div style="width: 50%;"><input type="checkbox"/> SUB S CORP</div> <div style="width: 50%;"><input type="checkbox"/> SOLE PROPRIETOR</div> <div style="width: 50%;"><input type="checkbox"/> GENERAL PARTNERSHIP</div> <div style="width: 50%;"><input type="checkbox"/> LIMITED PARTNERSHIP</div> <div style="width: 50%;"><input type="checkbox"/> LIMITED LIABILITY COMPANY</div> <div style="width: 50%;"><input type="checkbox"/> OTHER (ASSN/ESTATE/TRUST)</div> <div style="width: 50%;"><input checked="" type="checkbox"/> GOVERNMENT</div> <div style="width: 50%;"><input type="checkbox"/> TRANSIT AUTHORITY</div> <div style="width: 50%;"><input type="checkbox"/> UTILITY</div> <div style="width: 50%;"><input type="checkbox"/> PUBLIC/PRIVATE CONSORTIUM</div> <div style="width: 50%;"><input type="checkbox"/> COLLEGE/UNIVERSITY</div> <div style="width: 50%;"><input type="checkbox"/> HEALTH CARE</div> <div style="width: 50%;"><input type="checkbox"/> RELIGIOUS</div> <div style="width: 50%;"><input type="checkbox"/> NON-PROFIT CHARITABLE OR SOCIAL</div> </div>		
FINANCIALS (NOTATION REQUIRED)	THE FINANCIAL STATEMENTS PROVIDED BY COMPANY MUST BE IN THE NAME OF THE ENTITY IDENTIFIED ABOVE. IF THE FINANCIAL STATEMENTS ARE IN THE NAME OF ANOTHER ENTITY, THEN ADDITIONAL UNDERWRITING REQUIREMENTS WILL APPLY <input type="checkbox"/> PUBLICLY TRADED (SYMBOL _____) <input type="checkbox"/> GOVERNMENT/INSTITUTIONAL ORGANIZATION (IF ONLINE, PROVIDE WEBSITE _____) <input type="checkbox"/> PRIVATE (3 RD PARTY AUDITED REQUIRED) <input type="checkbox"/> BANK PROVIDED		
IRS FORMS:	<input type="checkbox"/> SUBSTITUTE W-9 (REQUIRED FOR U.S. ENTITIES) <input type="checkbox"/> SUBSTITUTE W-8BEN (REQUIRED FOR NON-U.S. ENTITIES)		
DESCRIPTION OF PRODUCT/SERVICES – PLEASE BE SPECIFIC:			
PROCESSING ENVIRONMENT(S):	RETAIL 100 % RESTAURANT 0 % LODGING 0 % PAY AT PUMP 0 % MAIL ORDER 0 % TELEPHONE ORDER 0 % SUPERMARKET 0 % TOTAL MUST EQUAL 100% INTERNET 0 % TRANSACTIONS ACCEPTED THROUGH A WEBSITE REQUIRES THAT SPECIFIC SECURITY/POLICY REQUIREMENTS BE MET IN ORDER TO PROCESS		
CARD TYPES: COMPANY MUST DETERMINE IN ACCORDANCE WITH THE PAYMENT NETWORK REGULATIONS WHICH TYPE(S) OF CREDIT CARDS AND DEBIT CARDS IT WILL AGREE TO ACCEPT AS A FORM OF PAYMENT FROM ITS CUSTOMERS. THE CARD TYPES INCLUDE VISA CREDIT, VISA DEBIT, MASTERCARD CREDIT, MASTERCARD DEBIT, AND DISCOVER (JCB, DI, UP)			
NETWORK:	<input checked="" type="checkbox"/> ELAVON <input type="checkbox"/> OTHER:	POINT OF SALE SOLUTION(S): (MARK ALL THAT APPLY)	<input checked="" type="checkbox"/> TERMINALS: <input type="checkbox"/> VAR: <input checked="" type="checkbox"/> ELAVON SOFTWARE: ELAVON CERTIFIED <input type="checkbox"/> CERT PENDING <input type="checkbox"/>
ADVANCED DEPOSIT PROGRAM ELECTION THIS IS LIMITED TO HOSPITALITY MCC'S)		<input type="checkbox"/> DO <input checked="" type="checkbox"/> DO NOT ELECT TO PARTICIPATE IN THE ADVANCE DEPOSIT SERVICE PROGRAM	
BANK ACCOUNT (CHECKING ACCOUNTS ONLY)- SUBMISSION OF BANK DOCUMENTATION IS REQUIRED FOR ALL DDAs SUBMITTED, AND WE MAY CONFIRM ANY DATA DIRECTLY WITH THE BANK			
PRIMARY BANK: (LOCATIONS MAY BE DIFFERENT AND WILL BE CAPTURED AT THE MID LEVEL)		PRIMARY BANK CONTACT NAME: PRIMARY BANK CONTACT PHONE:	
PRIMARY BANK ABA/ROUTING #:		PRIMARY BANK DDA ACCOUNT #:	
DDA DOCUMENTATION (ONE REQUIRED): <input checked="" type="checkbox"/> BANK LETTER / <input type="checkbox"/> VOIDED CHECK		<input type="checkbox"/> ACH DEBIT BLOCKING	
PROCESSING SERVICES AVAILABLE TO COMPANIES GENERALLY (CHECK DESIRED PROCESSING SERVICES)			
<input checked="" type="checkbox"/> CREDIT CARD SERVICES <input checked="" type="checkbox"/> DEBIT CARD (SIGNATURE-BASED) SERVICES <input checked="" type="checkbox"/> DEBIT CARD (PIN-BASED) SERVICES <input checked="" type="checkbox"/> BILL PAYMENT (PINLESS DEBIT) SERVICES <input type="checkbox"/> DYNAMIC CURRENCY CONVERSION (DCC) SERVICES <input type="checkbox"/> MULTI-CURRENCY PRICING (MCP) SERVICES <input checked="" type="checkbox"/> WIRELESS SERVICES <input type="checkbox"/> CONTACTLESS SERVICES <input type="checkbox"/> ELECTRONIC GIFT CARD SERVICES <input type="checkbox"/> WEBSUITE SERVICES <input type="checkbox"/> BILLER DIRECT SERVICES (SELECT ONE) <input type="checkbox"/> BILL PAYMENT PORTAL (BPP) <input type="checkbox"/> ENTERPRISE BILLING SOLUTIONS (EBS) COMPANY MUST COMPLETE THE APPLICABLE BILLER DIRECT SERVICES ENROLLMENT FORM BASED ON ABOVE SELECTION <input checked="" type="checkbox"/> INTERNET PIN-BASED DEBIT CARD SERVICES <u>SERVICES THAT ALLOWS COMPANY TO PROCESS:</u> <input checked="" type="checkbox"/> DOMESTIC INTERNET PIN-BASED CARD TRANSACTIONS <input type="checkbox"/> INTERNATIONAL INTERNET PIN-BASED CARD TRANSACTIONS <input type="checkbox"/> CHINA UNION PAY (IF CHECKED, COMPANY MAY SUBMIT INTERNATIONAL PIN-BASED CREDIT CARD TRANSACTIONS AND INTERNATIONAL DEBIT CARD TRANSACTIONS FOR PROCESSING OVER THE CHINA UNIONPAY CO., LTD NETWORK) <input type="checkbox"/> <input type="checkbox"/> IF ADDITIONAL INTERNATIONAL NETWORKS ARE ELECTED, ATTACH SUPPLEMENTAL INTERNATIONAL NETWORKS ELECTION PAGE		<input type="checkbox"/> PAYMENT NAVIGATOR SERVICES <input type="checkbox"/> HEALTHCARE ADMINISTRATION SERVICES <input type="checkbox"/> ELIGIBILITY <input type="checkbox"/> PATIENT PAYMENT ESTIMATES <input type="checkbox"/> PATIENT STATEMENT <input type="checkbox"/> ELECTRONIC BILL PRESENTMENT <input checked="" type="checkbox"/> CONVERGE SERVICES <input type="checkbox"/> CONVERGE TOKENIZATION SERVICES <input type="checkbox"/> PETROLEUM SERVICES <u>PETROLEUM SERVICES AVAILABLE TO QUALIFIED COMPANIES (CHECK DESIRED PETROLEUM SERVICES):</u> <input type="checkbox"/> SATELLITE SERVICES <input type="checkbox"/> VOYAGER CARD ACCEPTANCE <input type="checkbox"/> SMARTLINK SERVICES <input type="checkbox"/> WRIGHT EXPRESS CARD ACCEPTANCE (SEPARATE WRIGHT EXPRESS CHARGE CARD ACCEPTANCE AGREEMENT REQUIRED) <input type="checkbox"/> ELECTRONIC CHECK SERVICES	

SERVICES AVAILABLE TO COMPANIES OPERATING IN CERTAIN JURISDICTIONS (CHECK DESIRED SERVICES)	
<input type="checkbox"/> SERVICES IN CANADA	<input type="checkbox"/> SERVICES IN PUERTO RICO
PROCESSING SERVICES AVAILABLE TO COMPANIES OPERATING IN CERTAIN CATEGORIES (CHECK DESIRED SERVICES)	
<input type="checkbox"/> EBT SERVICES <input type="checkbox"/> HOSPITALITY SERVICES <input type="checkbox"/> SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS (ELAVON FEE COLLECTION MODEL – CHECK ONE) <input type="checkbox"/> DIRECT DEBIT <input type="checkbox"/> INVOICE (WHEN AVAILABLE)	<input type="checkbox"/> NO SIGNATURE REQUIRED PROGRAM SERVICE
NON-PROCESSING SERVICES AVAILABLE TO COMPANIES GENERALLY (CHECK DESIRED SERVICES)	
<input type="checkbox"/> HOSTED GATEWAY SERVICES	<input type="checkbox"/> SAFE-T SERVICES
CONVENIENCE FEE AND GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES (GPISF)	
<input type="checkbox"/> CONVENIENCE FEE AND GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES <input type="checkbox"/> ATTACH GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE ENROLLMENT FORM CONVENIENCE FEE FUNDING MODEL (CHECK ONE): <input type="checkbox"/> COMPANY MANAGED ¹ <input type="checkbox"/> ELAVON MANAGED ² PAYMENT TRANSACTION TYPES <input checked="" type="checkbox"/> CREDIT (CHECK ALL THAT APPLY): <input checked="" type="checkbox"/> VISA <input checked="" type="checkbox"/> MASTERCARD <input checked="" type="checkbox"/> DISCOVER <input checked="" type="checkbox"/> SIGNATURE DEBIT (CHECK ALL THAT APPLY): <input checked="" type="checkbox"/> VISA <input checked="" type="checkbox"/> MASTERCARD <input checked="" type="checkbox"/> DISCOVER <input checked="" type="checkbox"/> PIN-BASED DEBIT <input type="checkbox"/> ACH (VIA ELECTRONIC CHECK SERVICES) <u>ELAVON PRODUCT SUPPORTING ELAVON-MANAGED CONVENIENCE FEE ASSESSMENT TO BE USED BY COMPANY (CHECK ALL THAT APPLY):</u> <input type="checkbox"/> BILLER DIRECT SERVICES (CHECK ONE OPTION BELOW, BUT ONLY IF COMPANY ELECTS BILLER DIRECT SERVICES): <input type="checkbox"/> BILL PAYMENT PORTAL (BPP) <input type="checkbox"/> ENTERPRISE BILLING SOLUTIONS (EBS) <input type="checkbox"/> COMPANY PROPRIETARY SOLUTION OR VALUE-ADDED SERVICER <input type="checkbox"/> OTHER: GPISF FUNDING MODEL (CHECK ONE): <input type="checkbox"/> COMPANY-MANAGED ³ <input type="checkbox"/> COMPANY-MANAGED WITH ELAVON POS DEVICES/SERVICE FEE TERMINALS ⁴ <input type="checkbox"/> ELAVON-MANAGED ⁵ <u>CARD ACCEPTANCE (CHECK ALL THAT APPLY):</u> <input checked="" type="checkbox"/> POINT OF SALE <input checked="" type="checkbox"/> INTERNET <input type="checkbox"/> IVR <input type="checkbox"/> OTHER:	GPISF SERVICES PROGRAMS (CHECK ALL THAT APPLY, BUT ONLY IF COMPANY ELECTS GPISF ASSESSMENTS): <input type="checkbox"/> MASTERCARD GOVERNMENT AND EDUCATION PAYMENT PROGRAM <input type="checkbox"/> VISA GOVERNMENT AND EDUCATION PAYMENT PROGRAM TRANSACTION TYPES: <input type="checkbox"/> FEDERAL INCOME TAX <input type="checkbox"/> BUSINESS TAX <input type="checkbox"/> GOVERNMENT FEES <input type="checkbox"/> OTHER TAX <input type="checkbox"/> STATE INCOME TAX <input type="checkbox"/> TUITION <input type="checkbox"/> REAL ESTATE PROPERTY TAX <input type="checkbox"/> OTHER EDUCATION EXPENSES PAYMENT TYPES FOR GPISF ASSESSMENT (NOT ALL PAYMENT TYPES ARE SUPPORTED FOR ALL PROGRAMS)(CHECK ALL THAT APPLY, BUT ONLY IF COMPANY ELECTS GPISF ASSESSMENT): <input type="checkbox"/> CREDIT – (CHECK ALL THAT APPLY): <input type="checkbox"/> VISA – ELIGIBLE MCCs: 8211, 8220, 8244, 8249, 9211, 9222, 9311, 9399 <input type="checkbox"/> MASTERCARD – ELIGIBLE MCCs: 8211, 8220, 8299, 9211, 9222, 9223, 9311, 9399, 9402 <input type="checkbox"/> DISCOVER (AVAILABLE IF ELAVON-ACQUIRED) <input type="checkbox"/> SIGNATURE DEBIT – (CHECK ALL THAT APPLY): <input type="checkbox"/> VISA – ELIGIBLE MCCs: 8211, 8220, 8244, 8249, 9211, 9222, 9311, 9399 <input type="checkbox"/> MASTERCARD – ELIGIBLE MCCs: 8211, 8220, 8299, 9211, 9222, 9223, 9311, 9399, 9402 <input type="checkbox"/> DISCOVER (AVAILABLE IF ELAVON-ACQUIRED) <input type="checkbox"/> ACH (VIA ELECTRONIC CHECK SERVICES) <u>ELAVON PRODUCT SUPPORTING GPISF ASSESSMENT TO BE USED BY COMPANY (CHECK ALL THAT APPLY):</u> <input type="checkbox"/> BILLER DIRECT SERVICES (CHECK ONE OPTION BELOW, BUT ONLY IF COMPANY ELECTS BILLER DIRECT SERVICES): <input type="checkbox"/> BILL PAYMENT PORTAL (BPP) <input type="checkbox"/> ENTERPRISE BILLING SOLUTIONS (EBS) <input type="checkbox"/> SERVICE FEE TERMINAL (VERIFONE VX520 OR EQUIVALENT) <input type="checkbox"/> COMPANY PROPRIETARY SOLUTION OR VALUE-ADDED SERVICER <input type="checkbox"/> OTHER:
COMPANY REPRESENTATIONS AND CERTIFICATIONS	
By signing below, the applicant company ("Company") and its authorized representative represent and warrant to Elavon, Inc. and Member that (i) all information provided in or with this company application ("Company Application") is true and complete and properly reflects the business and financial condition of Company, and (ii) the person signing this Company Application is duly authorized to bind Company to all provisions of the Agreement.	
PRINTED NAME:	TITLE:
SIGNATURE: X	DATE:

¹ "Company-Managed" means that Company establishes the amount of the Convenience Fee (subject to the requirements of the Agreement and applicable Payment Network Regulations) and retains the Convenience Fee. Company pays Elavon the per transaction fees as set forth on Schedule A to the Agreement for all Convenience Fee Transactions.

² "Elavon-Managed" means that Elavon establishes the amount of the Convenience Fee and retains the Convenience Fee in lieu of Company's obligation to pay Elavon the per transaction fees as set forth on Schedule A to the Agreement for Convenience Fee Transactions. The Convenience Fee is still charge by Company and included in the overall transaction amount charged to the Cardholder.

³ "Company-Managed" means that Company establishes the amount of the GPISF, programs its POS Devices to assess the GPISF, and retains the GPISF (subject to the requirements of the Agreement and applicable Payment Network Regulations). Company pays Elavon the per transaction fees as set forth on Schedule A to the Agreement for all GPISF Transactions.

⁴ "Company-Managed with Elavon POS Devices/Service Fee Terminals" means that Elavon programs the POS Devices to assess the GPISF established by Company and Company retains the GPISF. Company pays Elavon the per transaction fees as set forth on the Schedule A to the Agreement for all GPISF Transactions.

⁵ "Elavon-Managed" means that Elavon establishes the amount of the GPISF, and Elavon charges and retains the GPISF in lieu of Company's obligation to pay Elavon the per transaction fees as set forth on the Schedule A to the Agreement for GPISF Transactions.



SCHEDULE C
AFFILIATED ENTITIES

Check one:

- ☒ Company named on page 1 only, and all locations will operate under Tax ID Number _____.
- ☐ Company named on page 1, with Tax ID Number _____ and the following Affiliates or franchisees (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

Name

Tax ID Number

_____,
on behalf of itself and each of the Affiliated Entities
identified above ("Company"):

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

(Schedule C "Effective Date")



SCHEDULE D

PROCESSING SERVICES TERMS

This Schedule D sets out additional terms (and modifications to terms in the General Terms and Conditions) that are applicable if Company is receiving certain Processing Services.

1. Processing Services. This Section 1 of Schedule D applies if Company is receiving Processing Services.

1.1. Company Compliance. Company will not submit Transactions for processing to Elavon for any businesses, materially different products, or methods of selling other than those stated in the Company Application without Elavon's prior written consent.

1.2. Reserve Account.

- (a) **Establishment.** If a Reserve Event occurs, Elavon may establish a Reserve Account in the Reserve Amount to provide security and a source of funds to pay Elavon for all amounts that Company may owe under this Agreement. Elavon will have sole control of the Reserve Account, and, upon Company's delivery of funds to Elavon for creating credits in the Reserve Account (or Elavon's crediting the Reserve Account with amounts that otherwise would have been paid to Company), Company will have no further property interest in such funds (or rights to payment) other than with respect to a contingent right to payment from Elavon as described in this Agreement upon the termination of the Reserve Account.
- (b) **Reserve Amount.** The "Reserve Amount" is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period plus average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [number of days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the product is shipped to the Cardholder (if the goods are being shipped) or the date the Cardholder receives the product or service. Further, for purposes of this calculation, Elavon will determine the applicable period considering factors such as Company's Transaction volume and seasonality.
- (c) **Reserve Event.** The following will constitute "Reserve Events":
 - (i) Fraudulent activity in any monthly period that equals or exceeds 1% of Company's average monthly volume over the preceding 12-month period;
 - (ii) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to Elavon;
 - (iii) Elavon's reasonable belief that Company, if not approved by Elavon to engage in delayed delivery transactions, has accepted deposits but has not delivered the goods or services;
 - (iv) The commencement of a Bankruptcy Proceeding by or against Company;
 - (v) Termination of the Agreement for any reason or the occurrence of an event listed in Section 4.2 of the Agreement giving Elavon the right to terminate the Agreement;
 - (vi) Nonpayment of amounts owed by Company to Elavon;
 - (vii) Fines, assessments, or charges imposed or reasonably expected to be imposed by the Payment Networks;
 - (viii) The occurrence of a material adverse change in Company's financial condition;
 - (ix) Assignment of the Agreement by Company in violation of Section 18.5 of the Agreement; and



- (x) Revocation, termination, expiration or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.
- (d) **Funding.** Elavon may fund the Reserve Account up to the Reserve Amount by any of the following means:
 - (i) Elavon may require Company to transfer funds to Elavon for credit to the Reserve Account;
 - (ii) Elavon may debit the DDA and provide a corresponding credit to the Reserve Account; or
 - (iii) Elavon may credit to the Reserve Account amounts it would otherwise be obligated to credit to Company.
- (e) **Use of Funds in Reserve Account.** Elavon may, without notice to Company, apply credits in the Reserve Account against any outstanding amounts Company owes under the Agreement. Additionally, Elavon may debit the Reserve Account to exercise its rights under the Agreement, including its rights of set-off and recoupment to collect any amounts due to Elavon.
- (f) **Termination of Reserve Account.** Credits in the Reserve Account will remain in the Reserve Account, and will be used only to pay amounts due to Elavon, until Company has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments and charges from the Payment Networks, and any other payments due under the Agreement. In no event will Company be entitled to a payment from Elavon in an amount equal to the credits remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement. Notwithstanding the foregoing, if Elavon determines that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, then Elavon may terminate the Reserve Account or release credits from the Reserve Account, or both, prior to the termination of the Agreement.
- (g) **Alternate Security.** In lieu of or in addition to establishing and crediting a Reserve Account, Elavon may accept an alternative form of security (“**Alternate Security**”) for the purpose of providing a source of funds to pay Elavon for all amounts owed by Company. Elavon may at any time reevaluate Alternate Security it previously accepted and require funding of a Reserve Account so that the amount of credits in a Reserve Account, taken together with amounts represented by any Alternate Security Elavon accepts, equals the Reserve Amount.

1.3. **Recoupment and Set-off.**

- (a) Elavon has the right of recoupment and set-off, and may offset any outstanding or uncollected amounts owed to it hereunder from:
 - (i) Any amounts it would otherwise be obligated to deposit into the DDA;
 - (ii) The Reserve Account by reducing the credits thereto; and
 - (iii) Any other amounts it may owe Company under the Agreement.
- (b) Company acknowledges that in the event of a Bankruptcy Proceeding, in order for Company to provide adequate protection under Bankruptcy Code Section 362 to Elavon hereunder, Elavon may require the creation of a Reserve Account and will have the right to offset against the Reserve Account for all obligations Company may owe to Elavon, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.

- 1.4. **MATCHTM and Consortium Merchant Negative File.** Company acknowledges that Elavon is required to report Company’s business name and the name of Company’s principals to the MATCHTM listing maintained by MasterCard and accessed by Visa, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Company specifically consents to Elavon’s fulfillment of the obligations related to the listing of Company and Company information in such databases, and Company waives all claims and liabilities Company may have as a result of such reporting.

- 1.5. **Remedies Cumulative.** The rights conferred upon Elavon in this Schedule D, Section 1 are not intended to be exclusive of each other or of any other rights and remedies of Elavon under the Agreement, at law or in equity. Rather, each and every right of Elavon under the Agreement, at law or in equity, is cumulative and concurrent and in addition to every other right.
- 1.6. **Termination.** In addition to Elavon's termination rights in Section 4 of the Agreement, Elavon may terminate the Agreement:
 - (a) If, after providing 30 days' written notice, either of the following conditions remain:
 - (i) Excessive Activity; or
 - (ii) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon in the Agreement (including in the Company Application) or an amendment to the Agreement.
 - (b) Immediately if any of the following occur:
 - (i) The levy, garnishment or attachment of the Alternate Security, the DDA, the Reserve Account, or any of Company's property in Elavon's possession;
 - (ii) Any change, not approved by Elavon, that constitutes a material change in the types of goods or services Company sells or in the methods by which Company sells them, or any change that results in Company's violation of Elavon's underwriting policy; or
 - (iii) Revocation, termination, expiration or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement.
- 1.7. **Member Responsibilities.** Member will facilitate ACH Transactions and comply with all ACH Rules as applicable to Member in providing Services under this Agreement. Member will have no liability to Company under this Agreement. Member is an entity governed by the Laws of the United States of America and as such, cannot provide any products or services to Company or its Customers that contravene the Laws of the United States of America, including the Laws promulgated by OFAC or any successor thereto.
- 1.8. **Company Information.**
 - (a) **Authority.** Company authorizes Elavon to make, upon receipt of the Company Application and from time to time, any business credit or other inquiries it considers reasonably necessary to review the Company Application or continue to provide Services under the Agreement. Company also authorizes any person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.
 - (b) **Financial Information.** At Elavon's request, Company will provide Elavon audited financial statements prepared by an independent certified public accountant selected by Company. Within 120 days after the end of each fiscal year, Company will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Company also will provide Elavon such interim financial statements and other information as Elavon may request from time to time. Notwithstanding the requirements in this section, Company will not be obligated to provide financial statements or similar information required by this section other than those included in Company's filings with the Securities and Exchange Commission so long as Company remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.
- 1.9. **Company Data Incident.**
 - (a) **Notice and Investigation.** Company acknowledges that Cardholder Data and bank account information it obtains in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Company will notify Elavon within 24 hours (and if notice is given



orally, it must be confirmed in writing within the same 24 hour period) if Company knows or suspects that Cardholder Data, Customer information, or Transaction Information has been accessed or used without authorization from Company or systems within Company's control (a "Data Incident"). The notice must include:

- (i) A detailed written statement about the Data Incident including the contributing circumstances,
- (ii) The form, number and range of compromised account information,
- (iii) Specific account numbers compromised, and
- (iv) Details about the ensuing investigation and Company's security personnel who may be contacted in connection with the Data Incident.

Company will fully cooperate with the Payment Networks and Elavon in the forensic investigation of the Data Incident. Within 72 hours of becoming aware of the Data Incident, Company will engage the services of a data security firm acceptable to the Payment Networks and to Elavon to assess the vulnerability of the compromised data and related systems. Company will provide weekly written status reports to Elavon until the forensic audit is complete. Company will promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks or Elavon may request. In addition, Company will provide all audit reports to Elavon, and such audits must be completed to the satisfaction of the Payment Networks and of Elavon. If Company fails to supply the forensic audits or other information required by the Payment Networks or by Elavon, Company will allow Elavon to perform or have performed such audits at Company's expense.

- (b) **Preservation of Records.** If there is a Data Incident, Company will take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Company will cooperate with Elavon to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon with (and obtaining any necessary waivers for) all relevant information to verify Company's ability to prevent future data incidents in a manner consistent with the Agreement.
- (c) **Liability for Data Incident.** Without waiving any of Elavon's rights and remedies, Company is liable for all fraudulent transactions related to any Data Incident and all costs Elavon incurs as a result of such Data Incident, including all (i) fees, fines, penalties or assessments by the Payment Networks, (ii) claims from third parties, and (iii) costs related to the notification of Cardholders or Customers, cancellation of Payment Devices (including underlying accounts), re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI-DSS review for a report of compliance.
- (d) **Data Incident and Payment Network Audit.** If there is a known or suspected Data Incident, or if required by the Payment Networks, then at Elavon's or any Payment Network's request, Company will obtain at its expense and submit to Elavon a copy of a forensic audit from a qualified incident response assessor of the information security of Company's business. Company acknowledges that the Payment Networks have the right to audit Company's operations to confirm compliance with the Payment Network Regulations.

2. Payment Navigator Services. This Section 2 of Schedule D applies if Company is receiving Payment Navigator Services.

2.1. Additional provisions.

- (a) **Section 13.2. Indemnification By Company.** In addition to Company's indemnification obligations in Section 13.2, Company will indemnify and defend Elavon, its Affiliates, and their respective employees, officers, directors, and agents against all Losses in connection with Claims arising from alleged infringement of patent, copyright or other intellectual property right, or misappropriation of trade secrets, of any third party by Payment Navigator as modified or altered by Company, its partners, employees, agents or contractors, or the use of any data submitted by Company.
- (b) **Section 18.3. Exclusivity.** This section is amended by adding to the end of Section 18.3 of the Agreement:



"Notwithstanding the foregoing, this exclusivity provision will not apply to any Company point-of-sale location that does not interface or interact with the Payment Navigator Services. The parties intend that this Section only applies to Company's Affiliated Entities that interface with the Payment Navigator Services."

3. Additional Definitions

"**Alternate Security**" has the meaning stated in Schedule D, Section 1.2(g).

"**Card Not Present**" means the processing environment where the Payment Device is not physically presented to Company by the Cardholder as the form of payment at the time of the Transaction.

"**Convenience Fee**" means a fee charged by Company for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.

"**Excessive Activity**" means the occurrence, during any monthly period, of Chargebacks or Retrieval Requests in excess of 1% of the gross dollar amount of Company's Transactions or returns in excess of 2.5% of the gross dollar amount of Company's Transactions.

"**Reserve Amount**" means the amount established pursuant to the calculation stated in Schedule D, 1.2(b).

"**Reserve Event**" means the events designated in Schedule D, Section 1.2(c).

"**Retrieval Request**" means a request initiated by a Cardholder or Issuer that requires Company to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

SCHEDULE H

GOVERNMENT TERMS

The terms in this Schedule H are applicable only in the event Company (i) has selected the checkbox on the signature page of the Agreement indicating that these terms apply, and (ii) qualifies as a “government entity” or “government institution” under applicable local, state or federal law. Except as expressly modified pursuant to this schedule, all terms and conditions of the Agreement, including all other schedules and addenda to the Agreement, remain in full force and effect and will govern the relationship between Elavon and Company.

1. **Services for government entities and institutions.** The Agreement is modified as follows for government entities and institutions:

- 1.1. **Section 4.2.** Company will have the following termination right added to the Agreement as 4.2(f):

“(f) Company may terminate the Agreement on 60 days’ prior written notice to Elavon if sufficient legislative appropriation is not available.”

- 1.2. **Section 4.4, Early Termination Fee,** is deleted and replaced with “Intentionally Omitted.”

- 1.3. **Section 13.1** is revised as follows:

“**13.1 Elavon Responsibilities.** Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (a) Elavon’s breach of the Agreement; (b) Elavon’s or its third party contractors’ gross negligence or willful misconduct; (c) Elavon’s or its third party contractors’ violation of applicable Laws or Payment Network Regulations; (d) Elavon’s alleged infringement or other violation of a U.S. or Canada patent, copyright or trademark of a third party by the Services in the form delivered or Company’s use thereof; or (e) any personal injury or real or tangible personal property damage to the extent caused by Elavon or its third party contractors.”

- 1.4. **Section 13.2** is revised as follows:

“**13.2 Company Responsibilities.** As between Company and Elavon, Company will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of (a) any Transaction processed under the Agreement; (b) Company’s breach of the Agreement; (c) Company’s or its Service Providers’ gross negligence or willful misconduct; (d) Company’s or its Service Providers’ violation of Laws or Payment Network Regulations; (e) any action taken by Elavon with respect to the DDA (and, if Company is receiving Processing Services, the Reserve Account) in accordance with the Agreement; or (f) any personal injury or real or tangible personal property damage to the extent caused by Company or its Service Providers. Company will not make any claims against Elavon for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages.”

- 1.5. **Sections 13.3 and 13.4** are deleted.

- 1.6. **Section 13.5** is revised as follows:

“**13.5 Infringement Claims.** If any part of the Services or the use of the Services becomes, or in Elavon’s opinion is likely to become, the subject of a third-party claim of infringement, and as a result of such claim Company’s use of the Services may be enjoined or interfered with, then Elavon will, at its option and expense, either (i) obtain a license for Company to continue using the alleged infringing component(s) of the Services; (ii) modify the alleged infringing component(s) of the Services to avoid the infringement in a manner that still permits the Services to perform in all material respects in accordance with the Agreement; or (iii) replace the alleged infringing

component(s) of the Services with compatible, functionally equivalent, and non-infringing component(s). Elavon will use commercially reasonable efforts to accomplish the remedies identified in this section in a manner that minimizes the disruption to Company's business operations. If Elavon is not able to accomplish the above remedies within a commercially reasonable time frame and on commercially reasonable terms, Elavon may terminate the Agreement upon written notice to Company. Upon such termination, Elavon will promptly refund any fees paid for Services not performed as of the date of termination."

1.7. **Section 18.2, Jurisdiction and Venue; Governing Laws**, is deleted and replaced with "Intentionally Omitted."

1.8. **Section 18.3, Exclusivity**, is deleted and replaced with "Intentionally Omitted."

1.9. **Section 1.8(b) of Schedule D, Financial Information**, is revised as follows:

"**1.8(b) Financial Information.** At Elavon's request, Company will provide Elavon audited financial statements prepared by an independent certified public accountant selected by Company, or if Company is audited by a governmental authority, then Company will provide financial statements from such governmental authority. Within 120 days after the end of each fiscal year (or in the case of a government entity, when available), Company will furnish Elavon, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Company will also provide Elavon such interim financial statements and other information as Elavon may request from time to time."

2. Elavon Fee Collection Models


2.1. **Direct Debit Fee Collection Model.** If Company elects the Direct Debit fee collection model on Schedule B, then Section 6.1 of the Agreement will remain unchanged and in full force and effect.

2.2. **Invoice Fee Collection Model.** If Company elects and is approved for the invoice fee collection model on Schedule B, then the second sentence of Section 6.1 of the Agreement is deleted and replaced with the following:

"Such fees will be calculated once each month for the previous month's activity. Elavon will send Company an invoice reflecting the fees due, which Company will pay within 30 days of the invoice date. In addition to all other available remedies, Elavon may offset any outstanding or uncollected amounts that are more than 90 days past due from (i) any amounts it would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon may owe Company under the Agreement."



AGENDA ITEM NO: **CC-E-1**

City Manager: 

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: July 18, 2016

SUBJECT: Approval - Authorize the City Manager to Approve Placement of an Engineering Technician at Step 5 of the Salary Range

CONFLICT OF INTEREST

None

RECOMMENDATION

Approve Placement of an Engineering Technician at Step 5 of the Salary Range.

EXECUTIVE SUMMARY

The Engineering Division has selected a candidate to fill the vacant Engineering Technician position. The candidate has served the City of Clovis well for over three (3) years; i.e., 14 months working part-time as an Engineering Intern and over two (2) years as a part-time Junior Engineer. As a result, the candidate has received merit increases over the course of time. The current hourly pay rate for the selected candidate is only slightly below the fourth step of the full-time salary range for an Engineering Technician. Initial appointment above the third step of the salary range requires Council authorization.

BACKGROUND

Personnel Division staff conducted a recruitment process for an Engineering Technician position and the Engineering Division has selected a candidate from the current eligibility list. The Engineering Division recommends placing the selected employee on the fifth step of the Engineering Technician salary range. The candidate has worked as a part-time employee for the Engineering Division for over three (3) years; initially performing sub-professional level engineering work as an Engineering Intern, and a year later the employee was reassigned to an advanced technical level position as a part-time Junior Engineer. As a part-time Junior Engineer the candidate has been performing entry-level professional civil engineering work requiring a higher level of education and technical knowledge than an Engineering Technician.

The candidate's current hourly rate of pay (\$28.69) is only slightly below the current hourly equivalent of the fourth step (\$29.08) of the full-time salary range for an Engineering Technician.

FISCAL IMPACT

None; the position is currently budgeted at a level sufficient to fund this request.

REASON FOR RECOMMENDATION

Pursuant to the Clovis Municipal Code and the City's Personnel Regulations, the City Council must authorize personnel appointments in the competitive service beyond step three (3) of the salary range. The recommended candidate has several years of experience performing engineering level job functions in the Engineering Division and is highly qualified for the position.

ACTIONS FOLLOWING APPROVAL

The selected candidate will be placed at Step 5 of the Engineering Technician salary range, effective August 1, 2016.

Prepared by: Melissa Paminto, Management Analyst

Submitted by: Robert K. Ford, General Services Director





- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: July 18, 2016

SUBJECT: Approval – Claim Rejection of the General Liability Claim Submitted by James P. Franz on Behalf of the Estate of Dana Jeanean Stout, John Stout, Tiffany Stout, and Martha Richardson.

CONFLICT OF INTEREST

None

RECOMMENDATION

Reject the claim submitted by James P. Frantz on behalf of the Estate of Dana Jeanean Stout, John Stout, Tiffany Stout and Martha Richardson.

BACKGROUND

James P. Frantz filed a General Liability claim against the City of Clovis on behalf of the Estate of Dana Jeanean Stout, John Stout, Tiffany Stout and Martha Richardson (claimants) on June 16, 2016, for the wrongful death of Dana Jeanean Stout on December 17, 2015. Ms. Stout was crossing the street at Villa Avenue and was struck by a vehicle.

This claim does not state a specific amount for damages sought; instead, the claim has been filed as a "non - limited civil case" that exceeds \$10,000.

FISCAL IMPACT

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

REASON FOR RECOMMENDATION

It is recommended that the claim be rejected based on its merits. The City is not liable for this claim. In addition, by rejecting this claim the time in which lawsuits may be filed against the City will begin to toll.

ACTIONS FOLLOWING APPROVAL

A letter will be sent to the claimants through their legal counsel informing them that the claim has been rejected.

Prepared by: Lori Shively, Personnel / Risk Manager

Submitted by: Robert K. Ford, General Services Director

A handwritten signature in dark ink, appearing to be "RKF", is written over a horizontal line.



- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: July 18, 2016

SUBJECT: Approval - Claim Rejection for General Liability Claim of Nicholas Jerome Bailey

CONFLICT OF INTEREST

None

RECOMMENDATION

Reject the general liability claim filed by Nicholas Jerome Bailey.

BACKGROUND

On June 24, 2016, the City received a General Liability Claim from Nicholas Jerome Bailey. Mr. Bailey was arrested by Clovis police officers on January 9, 2016. Mr. Bailey's claim alleges that the officers used willful neglect of duty and that his civil rights were violated during the arrest. Mr. Bailey claims that as a result of his arrest he lost his job.

A specific claim amount has not been identified, however, the claim identifies the Superior Court as the court of appropriate jurisdiction based on a claim amount in excess of \$10,000. It is recommended that the claim be rejected.

FISCAL IMPACT

None

REASON FOR RECOMMENDATION

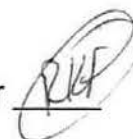
It is recommended that this claim be rejected on its merits. The police officers involved acted appropriately and within their rights as sworn peace officers during the arrest of Mr. Bailey.

ACTIONS FOLLOWING APPROVAL

A letter will be sent to Mr. Bailey informing him that his claim has been rejected.

Prepared by: Lori Shively, Personnel/Risk Manager

Submitted by: Robert K. Ford, General Services Director
General Liability Claim- Nicholas Jerome Bailey



1:47 PM - 7/11/2016



AGENDA ITEM NO:

CCF1

City Manager:

AA

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: July 18, 2016

SUBJECT: Approval - Final Acceptance for Tract 5664, located in the southeast area of Sierra and Temperance Avenues (De Young Properties 5418, L.P.).

ATTACHMENTS: (A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

1. Accept the public improvements for Tract 5664; and authorize recording of the Notice of Completion; and
2. Authorize release of the Performance Surety immediately and then release of the Labor and Materials Surety ninety (90) days after the recordation of the Notice of Acceptance, provided no liens have been filed; and release of the Public Improvements Maintenance Surety upon the expiration of the one-year warranty period, provided any defective work has been repaired to the City's satisfaction.

EXECUTIVE SUMMARY

The owner, De Young Properties 5418, L.P., has requested final acceptance of the public improvements constructed or installed in conjunction with this tract. The public improvements include all those shown on the subdivision improvement plans approved by the City Engineer. All required improvements have been completed in accordance with the plans and specifications.

BACKGROUND

City inspection staff has certified that all public and private improvements have been constructed or installed in accordance with the approved plans, specifications and standards, to the satisfaction of the City Engineer, with the exception of the sidewalks. Sidewalks are deferred to the building permits of adjacent lots. Construction of sidewalk improvements will require an encroachment permit for each lot. Sidewalk improvements will be completed according to the approved plans and Americans with Disability Act (ADA) specifications prior to finaling the lot. As required by the Municipal Code, the developer has furnished the required maintenance surety to guarantee the public improvements for a period of one year.

FISCAL IMPACT

The costs for periodic routine maintenance, including repairs needed due to deterioration with age and usage, will be incorporated into the annual maintenance budget of the Public Utilities Department as these costs are identified.


REASON FOR RECOMMENDATION


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

ACTIONS FOLLOWING APPROVAL

Record the Notice of Completion and release the Maintenance Surety as appropriate.

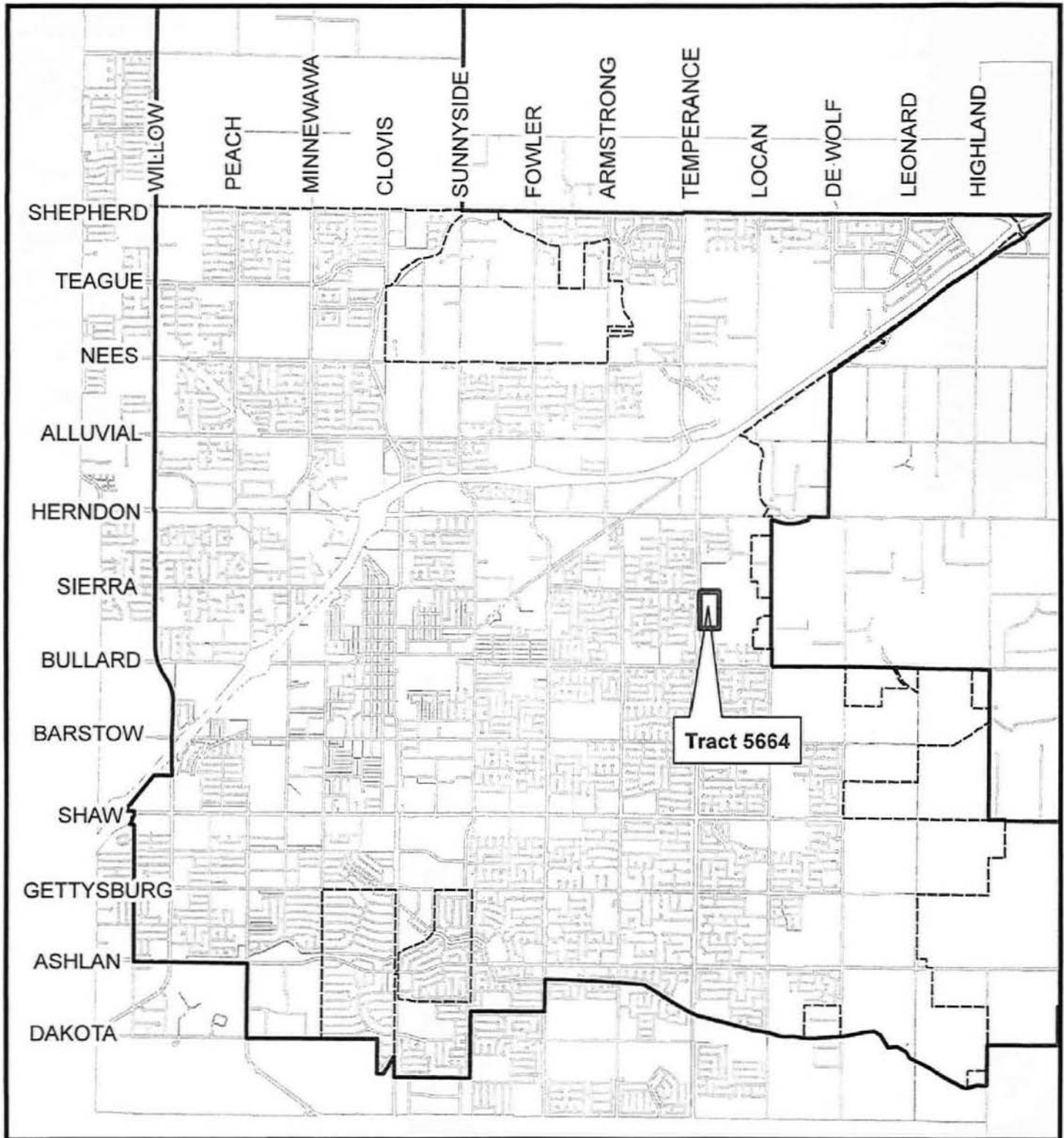
Prepared by: Gene G. Abella, Assistant Engineer

Submitted by: 
Michael Harrison
Interim City Engineer

Recommended by: 
Dwight Kroll, AICP
Director of Planning
And Development
Services

VICINITY MAP

Tract 5664
De Young Properties 5418, L.P.

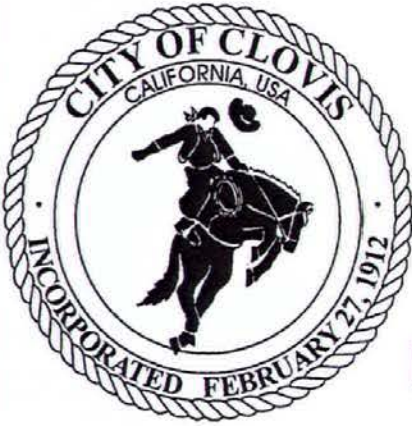


ATTACHMENT A

 CITY LIMITS  SPHERE OF INFLUENCE



1" = 5500'



AGENDA ITEM NO: CCF2
City Manager: AA

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: July 18, 2016

SUBJECT: Approval – Final Acceptance for CIP 15-11, Sunnyside Avenue & Third Street Entry Feature

ATTACHMENTS:
(A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

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

EXECUTIVE SUMMARY

The project consisted of constructing an entry feature located at the northwest corner of Sunnyside Avenue and Third Street. The work performed included constructing and/or installing, a decorative CMU seat wall, City standard block wall, concrete pedestal, City standard sidewalk, electrical conduit, and pull boxes.

Staff has evaluated the project site and all design aspects within the scope of this project for compliance with the Americans with Disabilities Act (ADA) accessibility standards as of July 18, 2016. The project was constructed to meet current ADA standards.

BACKGROUND

The bid opening date was on April 12, 2016, and the project was pre-awarded by City Council on April 11, 2016. DOD Construction was the low bidder and was awarded the

project. The project was completed in accordance with the construction documents and within the total contract time allotted.

FISCAL IMPACT

1.	Contract Award Amount	\$68,268.00
2.	Cost decrease due to changes in bid item quantities	-\$5,000.00)
3.	Contract Change Orders	0\$1,080.00
4.	Liquidated Damages Assessed	\$0.00

Final Contract Cost **\$64,348.00**

This project was approved in the 2015-2016 fiscal year budget. The project was fully supported by a grant through the Housing-Related Parks Program (HRPP).

REASON FOR RECOMMENDATION

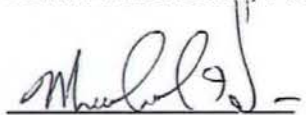
The Public Utilities Department, the City Engineer, the engineering inspector, and the project engineer agree that the work performed by the contractor is in accordance with the project plans and specifications, and has been deemed acceptable.

ACTIONS FOLLOWING APPROVAL

1. The notice of completion will be recorded; and
2. All remaining funds have been released per Public Contract Code Section 7107(c)(2).

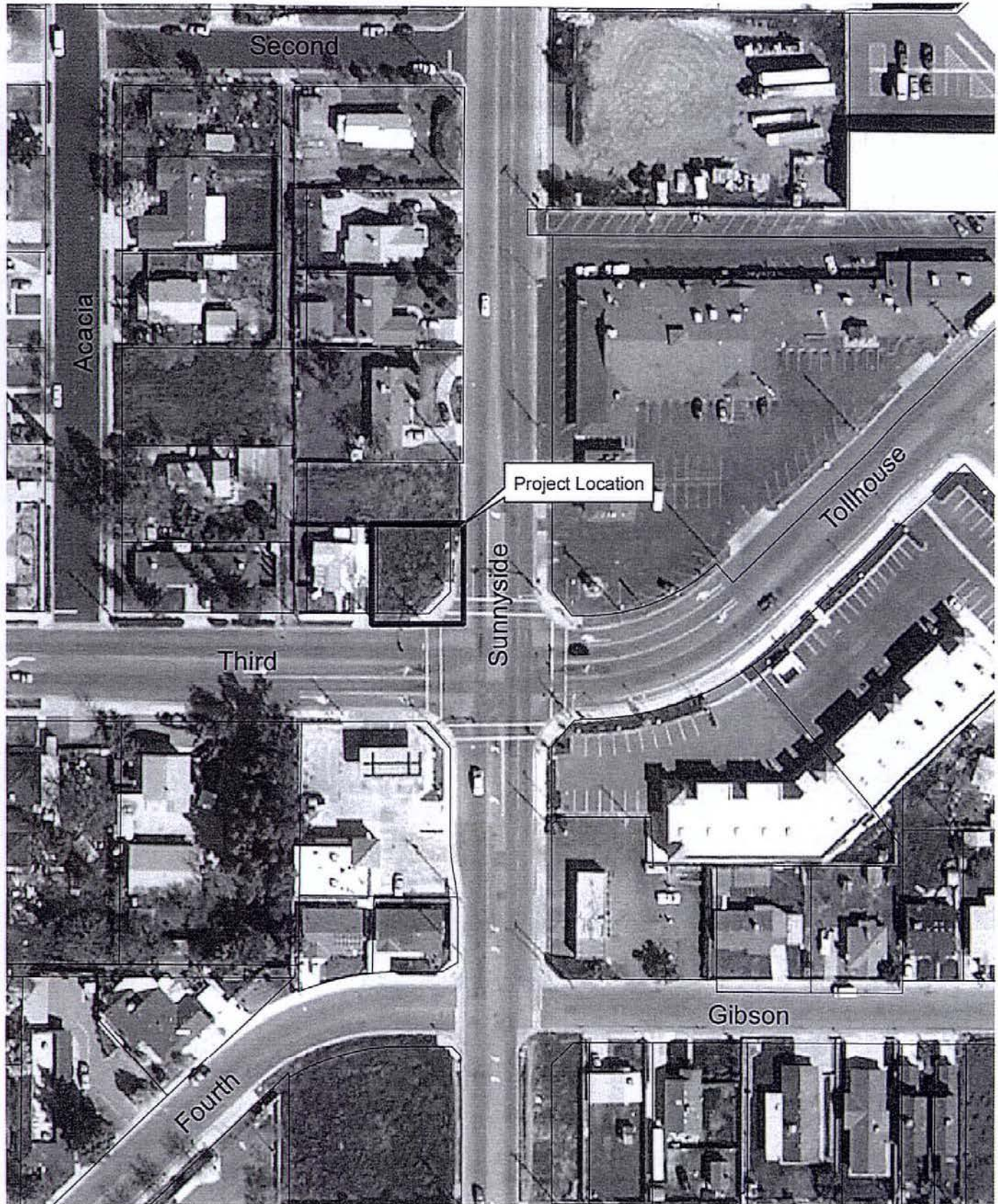
Prepared by: John Armendariz, Project Engineer

Submitted by:


Michael Harrison
Interim City Engineer

Recommended by:


Dwight Kroll, AICP
Director of Planning
and Development Services



9/4/2015

CIP 15-11 Sunnyside Avenue & Third Street Entry Feature





AGENDA ITEM NO: CCF 3
City Manager: MA

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council
FROM: Planning and Development Services Department
DATE: July 18, 2016
SUBJECT: Approval – Final Acceptance for CIP 15-17, Local Street Reconstruction 2015

ATTACHMENTS:
(A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

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

EXECUTIVE SUMMARY

The project consisted of reconstructing approximately 630 lineal feet of Mitchell Avenue from Cherry Lane to Harvard Avenue and approximately 950 lineal feet of Beverly Drive from Minnewawa Avenue to Harvard Avenue. The scope of work consisted of removing the existing pavement surface and installation of new aggregate base and asphalt concrete surface, miscellaneous concrete improvements, and installation of traffic striping and signage.

Staff has evaluated the project site and all design aspects within the scope of this project for compliance with the Americans with Disabilities Act (ADA) accessibility standards as of July 18, 2016. The project was constructed to meet current ADA standards.

BACKGROUND

The bid opening date was on April 05, 2016, and the project was awarded by City Council on April 11, 2016. B&B Construction Services was the low bidder and was awarded the project. The project was completed in accordance with the construction documents and within the total contract time allotted.

FISCAL IMPACT

1.	Contract Award Amount	\$149,023.00
2.	Cost increase due to changes in bid item quantities	\$11,071.00
3.	Contract Change Orders	\$14,177.00
4.	Liquidated Damages Assessed	\$0.00

Final Contract Cost **\$174,271.00**

The project was approved in the Community Investment Program 2015-2016 fiscal year budget and supported solely by the City Community Investment program.

REASON FOR RECOMMENDATION

The Public Utilities Department, the City Engineer, the engineering inspector, and the project engineer agree that the work performed by the contractor is in accordance with the project plans and specifications, and has been deemed acceptable. The contractor, B&B Construction Services, 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: Fernando Copetti, Project Engineer

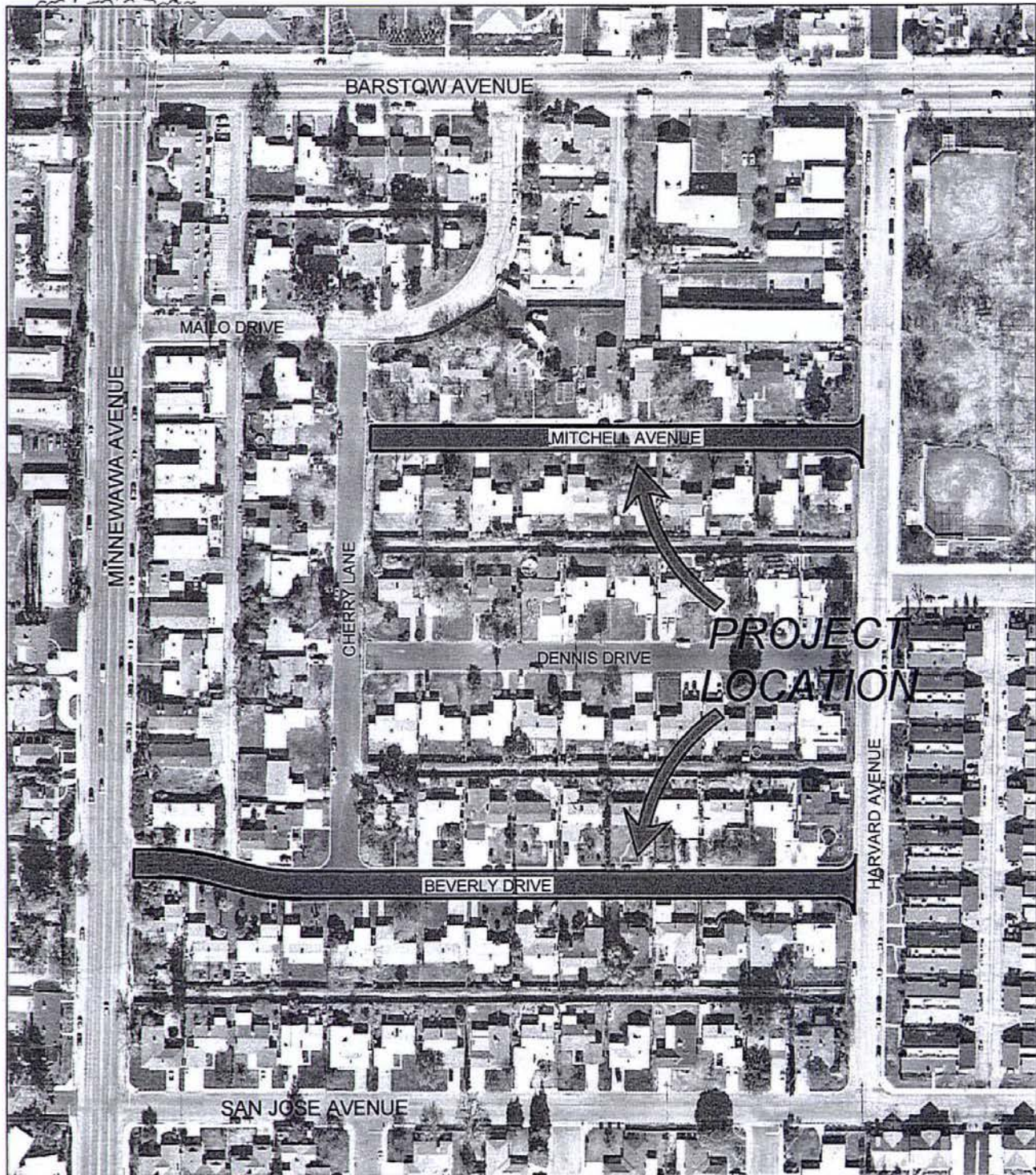
Submitted by: 
Michael Harrison
Interim City Engineer

Recommended by: 
Dwight Kroll, AICP
Director of Planning
and Development Services



CITY OF CLOVIS

PLANNING & DEVELOPMENT SERVICES DEPARTMENT



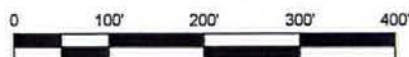
CIP 15-17 LOCAL STREET RECONSTRUCTION 2015 PROJECT



VICINITY MAP

GRAPHIC SCALE

1"=200'





AGENDA ITEM NO:

CCF4

City Manager:

[Signature]

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: July 18, 2016

SUBJECT: Approval – Final Acceptance for CIP 15-04, Railroad Avenue Street Improvements

ATTACHMENTS:

(A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

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

EXECUTIVE SUMMARY

The project consisted of reconstructing approximately 655 lineal feet of Railroad Avenue from Hoblitt Avenue to Barstow Ave. The scope of work consisted of removing the existing pavement surface and installation of new aggregate base and asphalt concrete surface, miscellaneous concrete improvements, upgrading existing concrete ADA ramps, and installation of traffic striping and signage.

Staff has evaluated the project site and all design aspects within the scope of this project for compliance with the Americans with Disabilities Act (ADA) accessibility standards as of July 18, 2016. The project was constructed to meet current ADA standards.

BACKGROUND

The bid opening date was on April 05, 2016, and the project was awarded by City Council on April 11, 2016. Seal Rite Paving & Grading was the low bidder and was

awarded the project. The project was completed in accordance with the construction documents and within the total contract time allotted.

FISCAL IMPACT

1.	Contract Award Amount	\$140,560.70
2.	Cost increase due to changes in bid item quantities	\$2,712.29
3.	Contract Change Orders	\$0.00
4.	Liquidated Damages Assessed	\$0.00

Final Contract Cost **\$143,272.99**

The project was approved in the Community Investment Program 2015-2016 fiscal year budget and supported solely by the City Community Investment program.

REASON FOR RECOMMENDATION

The Public Utilities Department, the City Engineer, the engineering inspector, and the project engineer agree that the work performed by the contractor is in accordance with the project plans and specifications, and has been deemed acceptable. The contractor, Seal Rite Paving & Grading, 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).

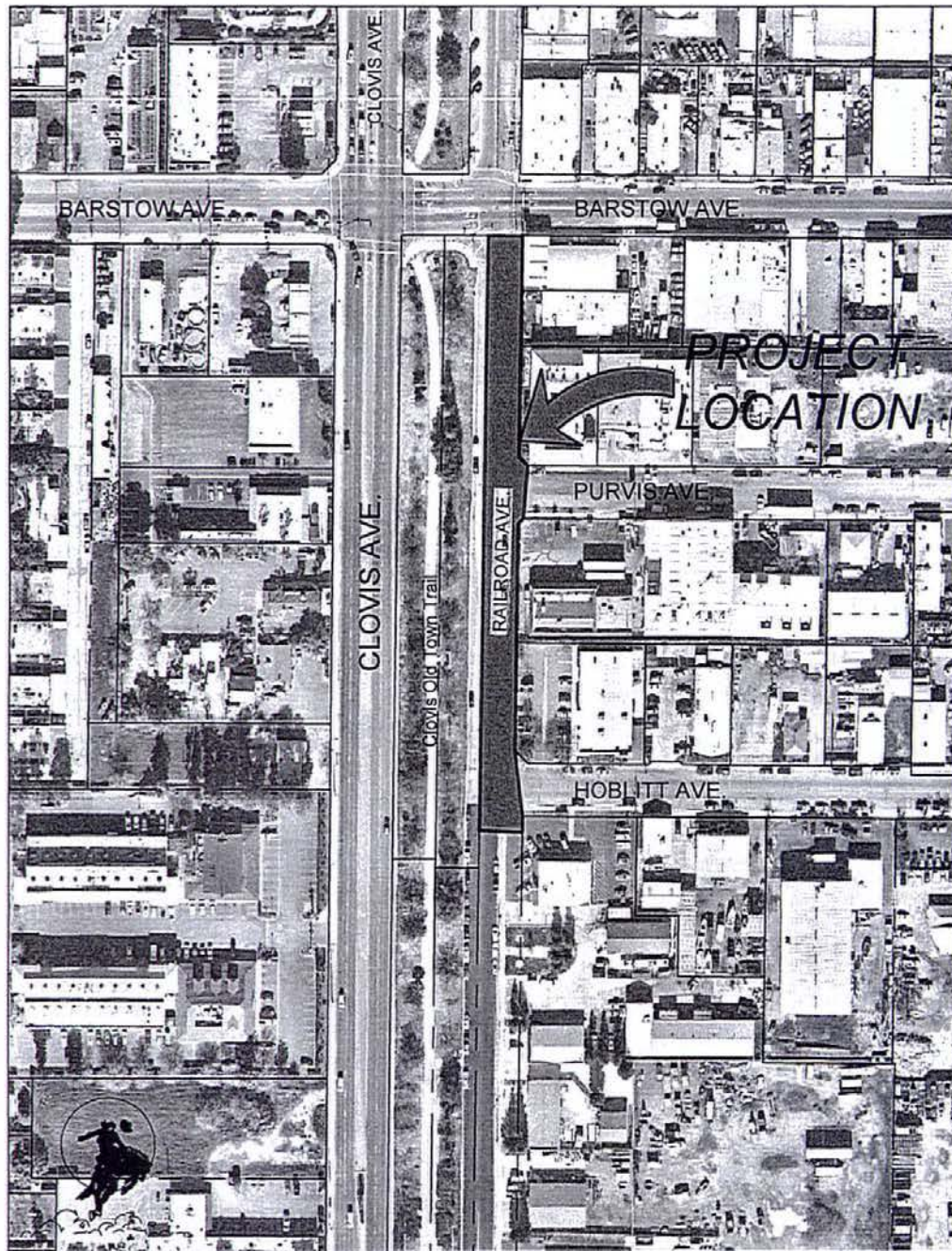
Prepared by: Fernando Copetti, Project Engineer

Submitted by: 
Michael Harrison
Interim City Engineer

Recommended by: 
Dwight Kroll, AICP
Director of Planning
and Development Services

CITY OF CLOVIS

PLANNING & DEVELOPMENT SERVICES DEPARTMENT



RAILROAD AVENUE IMPROVEMENTS PROJECT



VICINITY MAP

GRAPHIC SCALE

1"=200'





AGENDA ITEM NO: CCF5
City Manager: MA

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council
FROM: Planning and Development Services Department
DATE: July 18, 2016
SUBJECT: Approval – Bid Award for CIP 14-24, Dry Creek Business Park Expansion
ATTACHMENTS: (A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

1. For the City Council to award a contract for project CIP 14-24, Dry Creek Business Park Expansion, to Yarbs Grading and Paving, Inc., in the amount of \$2,982,767.10; and
2. For the City Council to authorize the City Manager to execute the contract on behalf of the City.

EXECUTIVE SUMMARY

The project consists of infrastructures for Dry Creek Business Park. The work involves demolition of existing buildings, clearing, grubbing, earthwork, and grading, construction of concrete curbs, gutters, valley gutters, drive approaches, sidewalks, ADA curb return ramps, asphalt-concrete pavements, public utilities including water, sewer, storm drain, electrical, gas, communication, and cable facilities, street lighting, traffic striping, traffic signage, chain link fencing, and concrete mow strips.

Staff has evaluated the project site and all design aspects within the scope of this project for compliance with the Americans with Disabilities Act (ADA) accessibility standards as of July 18, 2016. The project will be ADA compliant upon completion.

BACKGROUND

The following is a summary of the bid results of June 21, 2016:

BIDDERS	BASE BIDS
Yarbs Grading and Paving, Inc.	\$ 2,982,767.10
Emmett's Excavation, Inc.	\$ 3,300,312.00
Jim Crowford Construction Company, Inc.	\$ 3,441,285.00
Dave Christian Construction Company, Inc.	\$ 3,463,274.10
American Paving Company	\$ 3,486,861.60
Granite Construction Company	\$ 3,669,849.00

ENGINEER'S ESTIMATE

\$ 2,799,573.00

All bids were examined and the bidder's submittals were found to be in order. Staff has validated the lowest bidder contractor's license status; the contractor is in good standing with no record of complaints or violations recorded in the last three years. A record search for complaints or violations was performed through Cal OSHA and no violations were found.

FISCAL IMPACT

This project was budgeted in the 2015-2016 fiscal year budget. The project is funded in majority by Clovis Community Development Successor Agency Bond Funds, however some funds from the Economic Development Budget, and General Government Facilities Budget are available and will be used if necessary. Budgeted funds are available to proceed with award of the project at the apparent low bid amount.

REASON FOR RECOMMENDATION

Yarbs Grading and Paving, Inc. is the lowest responsible bidder. There are sufficient funds available for the anticipated costs of this project.

ACTIONS FOLLOWING APPROVAL

1. The contract will be prepared and executed, subject to the Contractor providing performance security that is satisfactory to the City.
2. Construction will begin approximately two (2) weeks after contract execution and be completed in one hundred (100) working days thereafter.

Prepared by: Thomas K. Cheng, Project Engineer

Submitted by:



Michael Harrison
Interim City Engineer

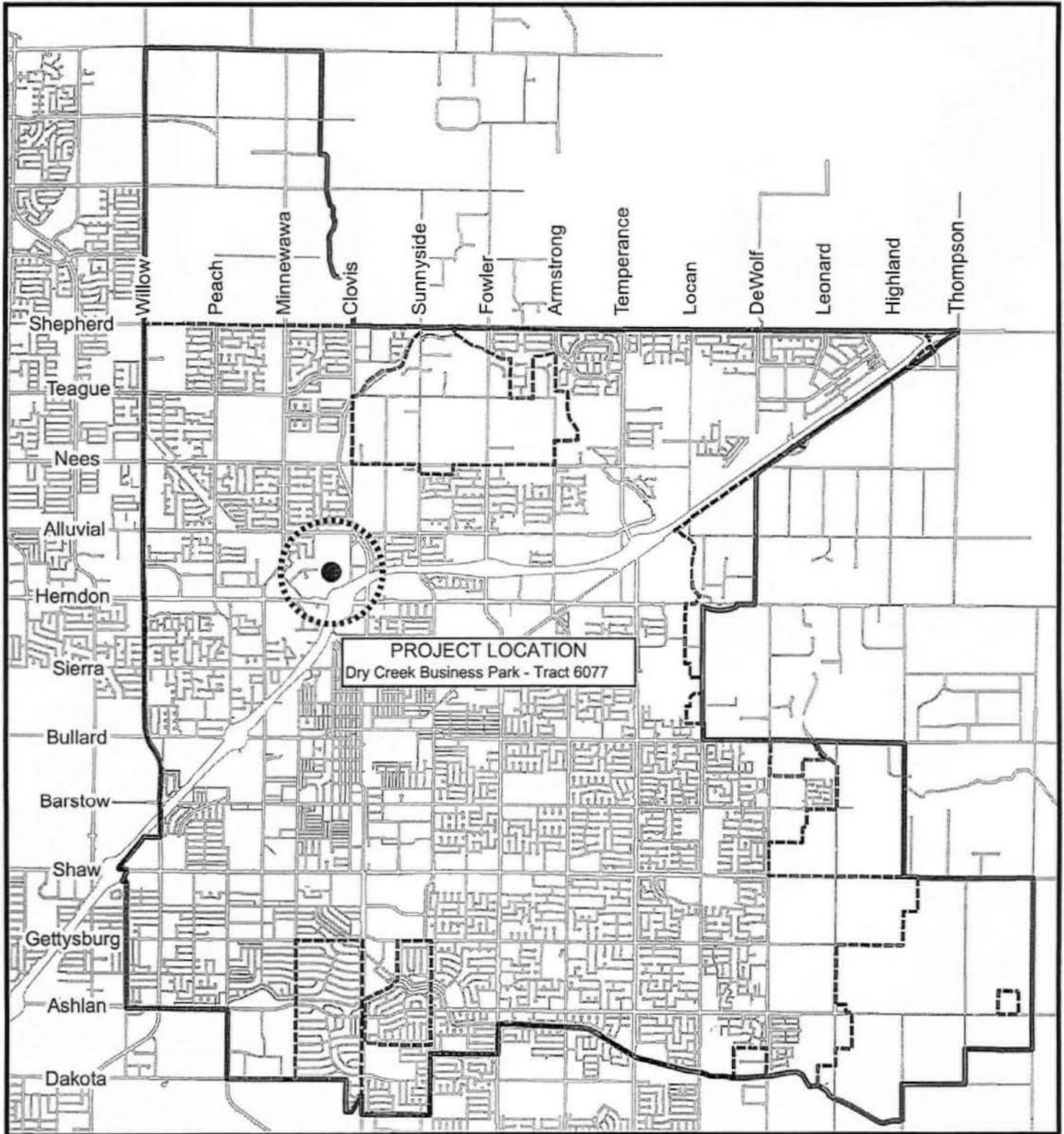
Recommended by:



Dwight Kroll
Director of Planning
and Development Services

VICINITY MAP

CIP 14-24 Dry Creek Business Park Expansion



July 6, 2016

ATTACHMENT A

 CITY LIMITS  SPHERE OF INFLUENCE



Prepared By: Thomas Cheng



AGENDA ITEM NO:

CCF6

City Manager:

[Signature]

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: July 18, 2016

SUBJECT: Approval – Award the contract for CIP 16-15, Police and Fire Headquarters Roof Repair project, through the Purchase Order Contract process, piggybacking on an existing competitively bid process issued by the National Joint Powers Alliance; and Authorize the City Manager to execute the contract on behalf of the City.

ATTACHMENTS:

(A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

1. For the City Council to award a contract for CIP 16-15, Police and Fire Headquarters Roof Repair, to Durham Construction and;
2. For the City Council to authorize the City Manager to execute the contract on behalf of the City.

EXECUTIVE SUMMARY

The project consists of the first phase of roofing repairs and energy efficiency upgrade for the Police and Fire Headquarters as part of a multi-year, multi-phase project. The work includes the removal of the roof tiles, installation of a self-adhered roof system, elevated batten system, and replacement of the existing roof tiles.

Staff has evaluated the project site and all design aspects within the scope of this project for compliance with the Americans with Disabilities Act (ADA) accessibility standards as of July 18, 2016. The project will be ADA compliant upon completion.

BACKGROUND

The City will use its membership in the National Joint Powers Alliance (NJPA) to provide the energy enhanced roofing system for the Police and Fire Headquarters, which is typical of the Job Order Contract (JOC)/Indefinite Quantities Construction (IQC) method provided through the NJPA.

The National Joint Powers Alliance is a public agency that serves as a member-focused cooperative for over 50,000 member agencies nationally. NJPA offers a multitude of cooperatively contracted products, equipment, and services (such as construction) to education and government agencies throughout the country.

JOC is an owner/contractor partnership which is characteristically used by public agencies where there may be unknown (fuzzy) quantities during rebuild, remodel, repair, energy efficiency enhancement, or improvement projects. All work has been competitively bid prior to the project so the cost of each element of work is fixed and known prior to construction. This eliminates the chance of costly change orders after work discoveries.

A local Clovis contracting firm, Durham Construction, has competitively bid work under the NJPA/JOC program and will be used to complete the necessary roof repair and energy upgrade. The base engineer's estimate for the work for this phase of the project is \$150,000.00.

Staff has validated Durham's contractor's license status; the contractor is in good standing with no record of complaints or violations recorded in the last three years. A record search for complaints or violations was performed through Cal OSHA and no violations were found.

FISCAL IMPACT

The project was approved in the Community Investment Program 2016-2017 fiscal year budget and is funded through the Government Facilities fund.

REASON FOR RECOMMENDATION

Durham Construction is a qualified contractor under the NJPA. There are sufficient funds available for the anticipated costs of this project.

ACTIONS FOLLOWING APPROVAL

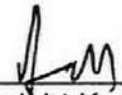
1. The contract will be prepared and executed.
2. Construction will begin approximately one (1) week after contract execution and will be completed approximately 30 working days thereafter.

Prepared by: Marianne Mollring, Project Administrator

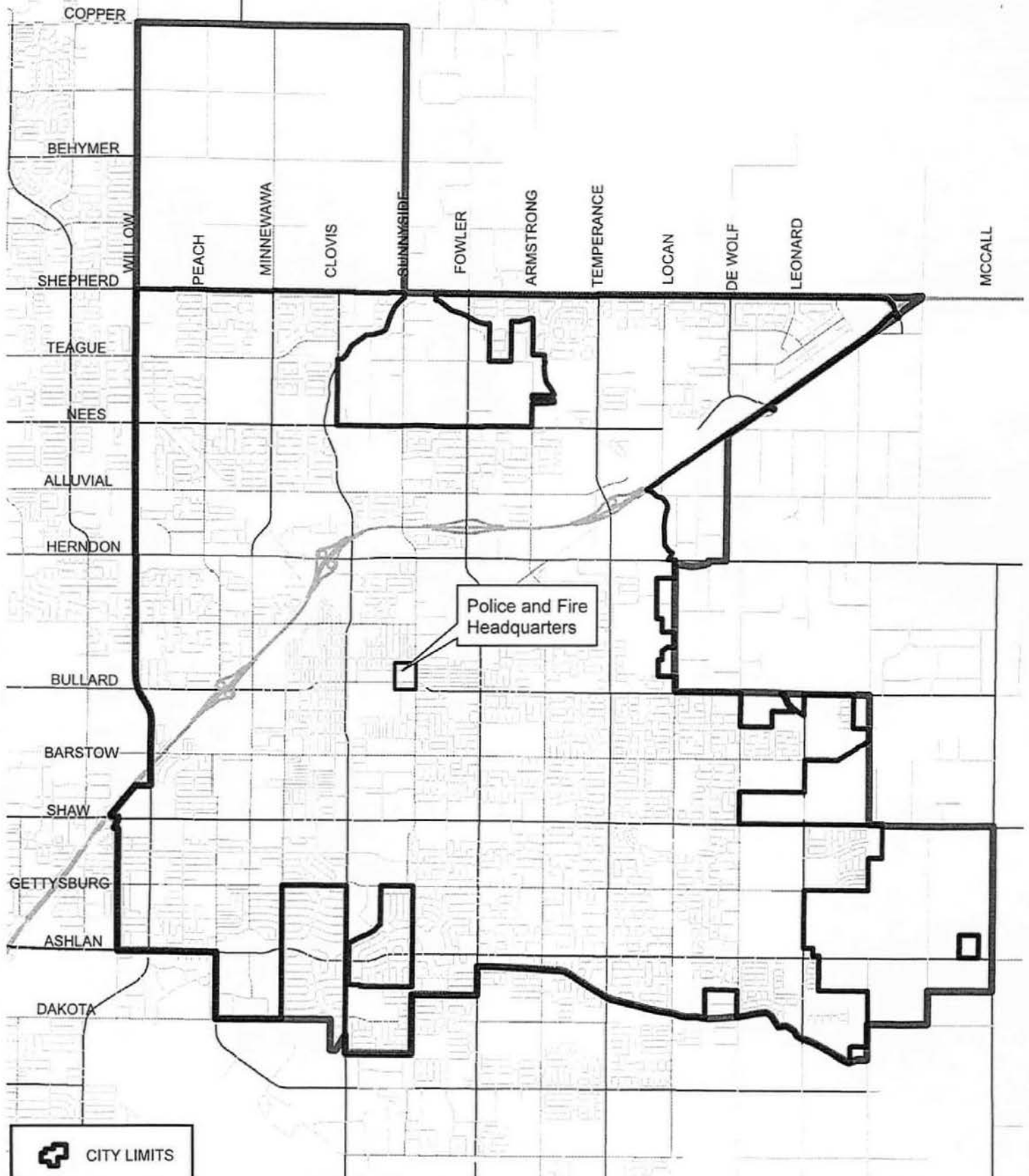
Submitted by:


Michael Harrison
Interim City Engineer

Recommended by:


Dwight Kroll, AICP
Director of Planning
and Development Services

CIP 16-15





AGENDA ITEM NO: CCF7

City Manager: pm

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: July 18, 2016

SUBJECT: Approval – Rejection of all bids for CIP 15-21, Santa Ana and Minnewawa Intersection Improvements

ATTACHMENTS: (A) Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to reject all bids for the project.

EXECUTIVE SUMMARY

The construction involves installing stamped concrete crosswalks at the intersection of Santa Ana Avenue and Minnewawa Avenue. The work also includes removing the existing stamped asphalt concrete crosswalks, and installation of concrete ADA curb return ramps.

Staff has evaluated the project site and all design aspects within the scope of this project for compliance with the Americans with Disabilities Act (ADA) accessibility standards as of July 18, 2016. The project will be ADA compliant upon completion.

BACKGROUND

The following is a summary of the bid results of July 12, 2016:

BIDDERS
Victor Concrete, Inc.

BASE BIDS
\$116,136.00

ENGINEER'S ESTIMATE

\$ 103,836.00

All bids were examined and the bidder's submittals were found to be in order. Staff has validated the lowest bidder's contractor license and OSHA status.

FISCAL IMPACT

This project was budgeted in the FY2015-2016 Community Investment Program. Budgeted funds are not available to proceed with award of the project at the apparent low bid amount.

REASON FOR RECOMMENDATION

There are insufficient funds available to proceed with award of the project.

ACTIONS FOLLOWING APPROVAL

1. All bids will be rejected.
2. Staff will re-scope the project before releasing to public to re-bid.

Prepared by: Johnny LeMaster, Project Engineer

Submitted by: 
for Michael Harrison
Interim City Engineer

Recommended by: 
for Dwight Kroll, AICP
Director of Planning
and Development Services

VICINITY MAP
CIP 15-21
Santa Ana and Minnewawa Intersection
Improvements

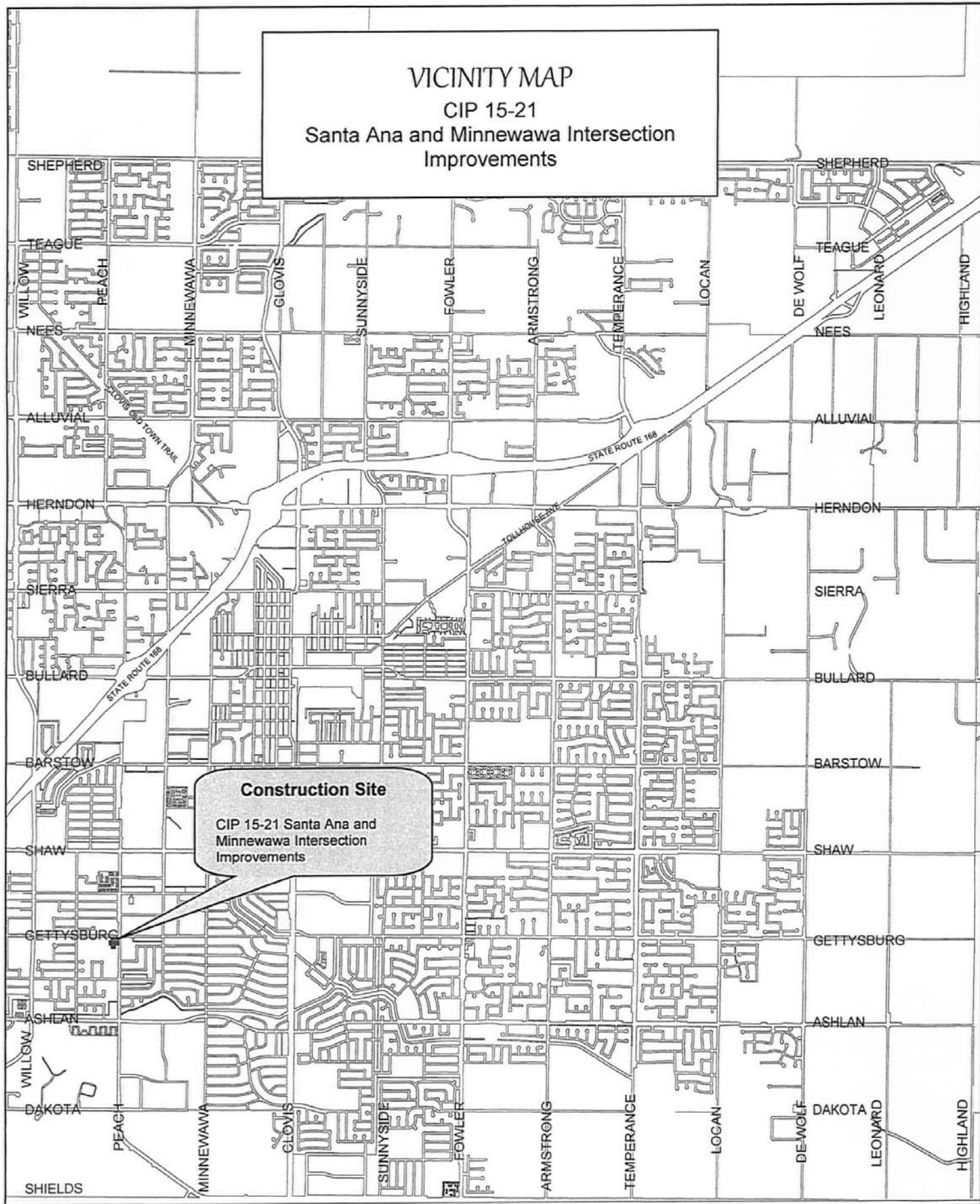


EXHIBIT A



AGENDA ITEM NO: CC-61

City Manager: pm

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council
FROM: Police Department
DATE: July 18, 2016
SUBJECT: Monthly Report to Council, May 2016

CONFLICT OF INTEREST

None

RECOMMENDATION

Receive and file May 2016 Police Department Monthly Report to City Council.

EXECUTIVE SUMMARY

The Police Department provides monthly updates to City Council Members on department activities.

BACKGROUND

The Police Department Monthly Report contains statistical data along with timely articles.

Clovis Police Department

Monthly Report to Council, May 2016

CLOVIS POLICE OFFICER/STAFF ACCOMPLISHMENTS

FBI Crime Index Statistics for May

Homicide	2	Burglary	40
Vehicle Theft	14	Forcible Rape	5
Robbery	6	Larceny Theft	168
Arson	1	Aggravated Assault	12

Clovis Police Department Statistics for May:

Calls for Service: Public: 4,541 Officer Initiated: 3,101 Total: 7,642

(Average Calls for Service per Day: 246.51)

Arrests: Adults: 351 Juveniles: 28 Total: 379

Traffic Accidents: Fatal: 1 Injury: 25 Non-Injury: 48 DUI: 10 Hit & Run: 22

DUI Arrests: 31 Traffic Cites: 451 Parking Cites: 108

Municipal Citations: 113 Priority One Response Time: 4.86 min.

Citizen Surveys of Service: Mar. April May

(Above average or excellent) **100% 100% 100%**

Volunteer Hours for May (@ \$22.14 per hour)

Volunteers: 72 Hours Served: 1046.03 Total Savings: \$23,159.10

Explorer Hours for May (@ \$11.50 per hour):

Explorers: 24 Hours Served: 178.5 Hours Served Total Savings: \$2,052.75

Community Development Block Grant Stats for May: Warnings/Courtesy Notices: 56

Closed CRMs due to compliance: 47

News Releases Available online and on Facebook

- Dave Thomas McCann entered a house where he lived and fatally stabbed his estranged wife and mother-in-law. Their bodies were found on May 7th. The victims were sixty-eight year old Judith Cooper and her daughter, 36-year-old Tierney Cooper-McCann. The house was in the 700 block of West Omaha Avenue in Clovis. McCann fled to several areas near the California Coast. Clovis Police Chief Matt Basgall at a news conference in Seaside announced the arrest of the 49-year-old McCann, who was the target of a manhunt by multiple police agencies since the killings were announced. McCann was transported back to Clovis to face charges of double murder. He was booked into the Fresno County Jail. Bail was set at \$2 million. Mayor Magsig sent his thanks and appreciation, and that of the City Council, for the great work accomplished on the homicide case.

- Clovis Police Officers, Personnel and Explorers participated in the kick off for the "The Battle of the Badges" blood drive at the Central California Blood Center on May 2nd. Our Police Department brought in 58 donors to give lifesaving blood during the 15th Annual North Valley Battle of the Badges! Patients in valley hospitals also thanked those in our Department for their willingness to donate.



NORTH VALLEY BATTLE OF THE BADGES BLOOD DRIVE

MAY 2nd - MAY 14TH

Competition between the Valley's Finest!

- Clovis Police Officers, once again, took part in the 12th Annual Kids Day at Pelco on May 6th. This year's theme was "Zoomania" for 1,300 special education students and along with chaperones

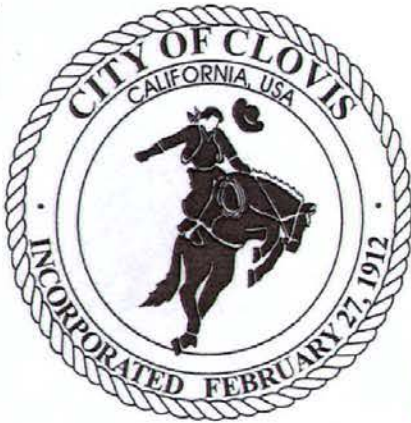


from throughout Fresno County Office of Education. The Clovis Police Traffic Unit took motors, a police car and the vehicle command unit (Tactical Operations).



- Thirteen Clovis Elementary School Children became "Chief for a Day" on May 27th. The winning students were picked up from their schools in police cars, and met in the lobby of the Clovis Police Department. They received a tour of Headquarters and watched special demonstrations and had "hands on" training in finger print dusting, evidence processing, defensive tactics and the EOD robot.

processing, defensive tactics and the EOD robot.



AGENDA ITEM NO: **CC-G-2**
City Manager: *[Signature]*

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Fire Department

DATE: July 18, 2016

SUBJECT: Approval – Authorizing the City Manager to sign the lease agreement with Pacific Gas and Electric for the use of the Clovis Fire Training Center; and Approval - Res. 16-____, Amending the General Services Budget to reflect \$47,000 in funding from the 2016/2017 first year lease with Pacific Gas & Electric and to fund General Services equipment, maintenance, and site improvements in the amount of \$33,000.

ATTACHMENTS: (A) Agreement between the City of Clovis and Pacific Gas and Electric for the use of the Clovis Fire Training Center
(B) Resolution No. 16-____
(C) Exhibit A – Budget Amendment

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to approve the lease proposal for the Clovis Fire Training Center with Pacific Gas and Electric Company (PG&E) and authorize the City Manager to sign a contract with any minor changes based on the proposal.

Authorize Resolution No. 16-____, Amending the General Services Budget to reflect \$47,000 in funding from the 2016/2017 first year lease with Pacific Gas & Electric and to fund General Services equipment, maintenance and site improvements in the amount of \$33,000.

EXECUTIVE SUMMARY

The Fire Department has looked for opportunities to develop public/private partnerships for the use of the Fire Training Center. The City has an open, flat undeveloped area in the northeast of the site that will be leased to Pacific Gas and Electric (PG&E). PG&E is proposing to install 160 feet of overhead line and several utility vaults on a temporary basis and the layout might be changed based on training needs. Pacific Gas and Electric will lease the use of the Training Center for 150 days per calendar year. The lease includes 17,000 sq. ft. of undeveloped area, the use of one classroom and an agreed upon area for PG&E employee parking. The annual revenue from this lease is \$56,400. The initial costs to add a few required items to the classroom and outside area will be paid for by General Services. On an ongoing basis the City will provide internet access, Wi-Fi, restroom cleaning and additional utility costs for the classroom use. This is a ten-year lease with Pacific Gas and Electric.

BACKGROUND

In 2013, the Fire Department completed an internal needs assessment for the Training Center and then contracted with an architect for a conceptual site design. This design was based on the next fifteen years of potential use and needs for the Fire Department. What the study did identify is there was undeveloped and not needed property to the northeast of the overall site. The Fire Department has had the goal of trying to develop public and private partnerships to help develop the future needs of the Training Center.

The Fire Department met with Clovis Unified School District to seek interest in moving their Regional Occupation Program (ROP) Fire Technology Program to the Training Center. Unfortunately, the Training Center is not in the Clovis Unified School District. The Fire Department also met with Fresno City College on a potential partnership to have the Fire Technology Program move to this site but unfortunately at a time the Clovis Fire Department was advised that they did not have any funds for a lease or improvements. Recently we reached out to them to gauge interest in using this site as a result of the local voters approving Measure C that will provide a funding source for a new Fire Academy location. Please note that the proposed lease with PG&E would not affect any future partnerships with either educational institution.

The Fire Department was contacted by Pacific Gas and Electric because the City had an old existing lease at the Training Center and they were looking for a site to conduct required annual certification for electrical troubleshooting personnel. The proposed lease allows PG&E access to the Training Center for 150 days per calendar year. The use from PG&E will include overhead lines and utility vaults that they will install on a temporary basis. PG&E will have employees from throughout the State travel to Clovis to attend this certification training. PG&E employees will use the classroom for the first day to complete didactic training and then on the second day move to the field for hands on training. There will be approximately twelve to fifteen employees on site per day. Employees will stay in local hotels and be given a daily per diem for food expenses that will, hopefully, be spent locally and benefit the City.

FISCAL IMPACT

The lease agreement with Pacific Gas and Electric has a monthly rent payment to the City in the amount of \$4,700 and resulting in an annual revenue of \$56,400. A few required items to the classroom and outside area based on the lease agreement are needed. On an ongoing basis, the City will need to provide internet access, Wi-Fi, restroom cleaning and additional utility costs. This is a ten-year lease with Pacific Gas and Electric. The FY 2016/17 budget will be amended to the General Services Budget to reflect \$47,000 in funding from the 2016/2017 first-year lease with Pacific Gas & Electric and to fund General Services equipment, maintenance and site improvements in the amount of \$33,000.


REASON FOR RECOMMENDATION

The Clovis Fire Training Center has looked for cooperative partners to use portions of the Training Center that are not in the Police/Fire Training Center fifteen-year plan. The area in the Northeast of the Fire Training Center is vacant land and is an ideal location for Pacific Gas & Electric to do required certification training.

ACTIONS FOLLOWING APPROVAL

Prepare contract for signature by the City Manager.

Prepared by: John Binaski, Deputy Fire Chief

Submitted by: John Binaski, Deputy Fire Chief 

**REAL PROPERTY LEASE AGREEMENT
CITY OF CLOVIS AND PACIFIC GAS & ELECTRIC COMPANY
CLOVIS FIRE TRAINING FACILITY**

This Real Property Lease Agreement ("Agreement") is made and entered into as of July _____, 2016 (the "Agreement Date") between the City of Clovis, a California municipal corporation and general law city ("Clovis") and Pacific Gas & Electric Company, a California corporation and investor owned utility company ("PG&E"), pursuant to the following Recitals, which are a substantive part of this Agreement:

RECITALS

- A. Clovis owns and maintains approximately 9.38 acres of property (409,092 square feet) located at 3455 Lind Avenue, in the City of Clovis, County of Fresno, which Clovis uses for its Fire Training Center ("Property"). Currently located on the Property is a 8,642 square foot administration building containing various classrooms, offices, and restroom facilities ("Administration Building"). The remainder of the Property consists of undeveloped land. The Property and Administration Building are described and depicted in **Exhibit A** attached hereto.
- B. PG&E desires to use portions of the Administration Building for employee classroom training and approximately 17,000 square feet of the undeveloped portion of the Property for constructing a hands on employee training facility ("PG&E Facility"). The PG&E Facility is proposed to be located on the northeast corner of the Property as described and depicted in **Exhibit B** attached hereto ("Facility Premises"). PG&E also desires to use approximately 2000 square feet of the undeveloped portion of the Property for parking utility trucks and other vehicles, the exact location to be determined ("Parking Premises"). The proposed location of the Parking Premises is depicted in **Exhibit C**, attached hereto, which Exhibit C will be replaced to reflect a different location mutually agreed upon by Clovis and PG&E.
- C. Clovis is willing to lease portions of the Property to PG&E for the reasons set forth in the Recitals, and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for the consideration set forth herein, Clovis and PG&E agree as follows:

AGREEMENT

1. **Lease of Property.** Clovis agrees to lease portions of the Property to PG&E as follows:
 - a. **Classroom.** Exclusive use of one (1) existing classroom located within the Administration Building, named Classroom Two or such other classroom as designated by Clovis and approved by PG&E, for up to 150 days per Lease year, up to 10 hours per day ("Classroom"). Clovis shall ensure that the Classroom has free, working, high speed Wi-Fi access for PG&E's use during the Term of this Lease and a working flat screen television that is HDMI compatible and with a working HDMI cable. Clovis is responsible for keeping the television in working order and within twenty-four (24) hours of PG&E's request, shall repair or replace the television in the Classroom if it is not working properly.

Subject to availability, PG&E may request to use the Classroom beyond 150 days per Lease year at the rental rate set forth in Section 3. All scheduling of the Classroom will be coordinated with the Administration Building's training staff. PG&E understands that during one (1) week every year, which week generally occurs during the second or third week in November, PG&E will not have access to any classroom in the Administration Building due to Clovis' training activities (the "No Access Week"). The No Access Week will occur from November 13th to 18th in 2016. Clovis will use reasonable efforts to notify PG&E of the No Access Week for each calendar year when the parties meet annually to coordinate annual scheduling. Clovis shall have first priority in the event of a scheduling conflict except if Clovis has previously agreed to the date selected by PG&E that is causing the conflict. The parties shall meet to discuss scheduling concurrently with execution of this Agreement, and thereafter on or before January 1 of each year this Agreement is in effect, and as otherwise needed. Use of the Classroom shall include the non-exclusive use of the Administration Building common areas, restrooms, and kitchen.

b. Facility Premises. Exclusive use of the Facility Premises for hands on training. PG&E may install training props and peripheral improvements, as further described in Section 4. Access to the Facility Premises shall be as shown on **Exhibit C**.

c. Parking Premises. Exclusive use of the Parking Premises for parking utility trucks and other vehicles, as further described in Section 4. Access to the Parking Premises shall be as shown on **Exhibit C**. The Classroom, together with the Facility Premises and Parking Premises are hereinafter collectively referred to as the "Premises".

2. Term of Lease.

a. Term. The term ("Term") of this Agreement shall be for ten (10) years, commencing on July __, 2016 ("Effective Date"), and ending on June 30, 2026 ("Expiration Date") unless earlier terminated as provided herein. At the end of the Term, this Agreement shall automatically terminate unless extended by written agreement of the Parties.

b. Option to Terminate. PG&E has the right to terminate this Agreement, without payment of any penalty or fee, for any reason or no reason, in PG&E's sole and absolute discretion, by providing Clovis with written notice of such election at least one hundred eighty (180) days prior to the date of termination (the "Early Termination Date"). If PG&E elects to terminate this Agreement pursuant to this subsection, this Agreement shall terminate as of the Early Termination Date, and Clovis and PG&E shall each be released from any and all obligations, duties, and liabilities to one another under this Agreement, except for obligations, duties, and liabilities that expressly survive expiration or termination of the Agreement. Notwithstanding the foregoing, the last month's rent shall not be prorated with an Early Termination Date.

3. Rent. PG&E shall pay rent to Clovis as follows:

a. Monthly Rent. Upon execution of this Agreement, PG&E shall pay to Clovis a monthly rent in the amount of Four Thousand Seven Hundred and 00/100 Dollars (\$4,700.00)

("Rent"). Rent is due and payable on the 1st day of each calendar month and is delinquent on the next day. First month's rent shall not be prorated. The monthly rent is for up to 150 days of annual classroom use (prorated the first year) as set forth in Section 1, and for use of the Facility Premises and Parking Premises.

b. Extra Classroom Rent. For all classroom use in excess of 150 days in a calendar year (prorated the first year), as set forth in Section 1, PG&E shall pay Clovis Two Hundred and 00/100 Dollars (\$200) per day.

c. Additional Restroom Rent. Should Clovis construct additional ADA compliant permanent restroom facilities as set forth in Section 4, PG&E shall pay additional rent in the amount of Four Hundred Twenty-Five and 00/100 Dollars (\$425.00) per month, plus other obligations as set forth in Section 4.

d. Annual CPI Adjustment.

(1) Commencing on the anniversary of the Effective Date of this Agreement, and annually thereafter during the Term (each an "Adjustment Date"), the amount of the monthly Rent, daily extra classroom rent, and restroom rent (if applicable) paid immediately before the Adjustment Date shall be adjusted according to the increase in the U.S. Consumer Price Index "CPI". "CPI" shall mean the percentage change in the Consumer Price Index All Urban Consumers (CPI-U) All Items U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics and Research, over the most recent twelve (12) month period for which figures are available through the month before the Adjustment Date. In no event shall any adjusted rent be less than the rent for the month immediately preceding the Adjustment Date or more than three percent (3%) of the monthly Base Rent payable for the month immediately preceding the Adjustment Date.

(2) If the CPI is not published for the specified month, the CPI for the next succeeding month shall be substituted and the shall otherwise be computed in accordance with Paragraph 3.d.(1) above. If the CPI is no longer published, then the adjustment to rent shall be based on an alternate index mutually agreed upon by Clovis and PG&E that most closely reflects the CPI.

e. Delivery. All rent shall be paid by PG&E and be personally delivered or mailed to the City of Clovis, Fire Department, 1233 Fifth Street, Clovis, California 93612 or any other place or places that Clovis may designate by written notice to PG&E.

f. Late Charge; Interest; NSF Fee. PG&E acknowledges that either late payment of Rent or issuance of a check returned for insufficient funds ("NSF check") may cause Clovis to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to processing, enforcement and accounting expenses, and late charges imposed on Clovis. If any installment of Rent due from PG&E is not received by Clovis within five (5) calendar days after date due, or if a check is returned for insufficient funds, PG&E shall pay to Clovis, respectively, \$235.00 as a late charge ("Late Charge") and \$25.00 as an insufficient funds fee ("NSF Fee"), any of which shall be deemed additional Rent; provided, however, that such Late Charge shall be waived on the first

occurrence in any given twelve (12) month period, so long as Tenant shall pay such delinquent amount within ten (10) days after receipt of written notice of such delinquency from Clovis. No late charge may be imposed more than once for the same late rental payment. Clovis and PG&E agree that these charges represent a fair and reasonable estimate of the costs Clovis may incur by reason of PG&E's late or NSF payment. Any Late Charge, or NSF Fee due shall be paid with the current installment of Rent. Clovis' acceptance of any Late Charge or NSF Fee shall not constitute a waiver as to any default of PG&E. Clovis' right to collect a Late Charge or NSF Fee shall not be deemed an extension of the date Rent is due, or prevent Clovis from exercising any other rights and remedies under this Agreement, and as provided by law.

4. Use of Premises.

a. Purpose. PG&E shall be permitted to use the Classroom, Facility Premises, and Parking Premises for the purposes set forth in the Recitals, and more particularly as follows:

- (1) The Classroom for employee and subcontractor classroom training.
- (2) The Facility Premises for the installation of underground and above ground training props for hands on employee and subcontractor training.
- (3) The Parking Premises for parking a trailer, utility trucks and other vehicles.

No other uses shall be permitted on the Premises except incidental or ancillary uses to the training activities, without the prior express written consent of Clovis.

b. Access. Access to the Classroom, Facility Premises and Parking Premises shall be through the main gate as shown on Exhibit C, except that Clovis reserves the right to change or modify PG&E's access point in the future provided substantially equivalent access is provided. Clovis shall provide access keys and/or codes to PG&E's authorized users as designated by PG&E. PG&E's authorized users shall be responsible to ensure that the access areas, Classroom, Facility Premises, and Parking Premises are properly secured- after use by PG&E's authorized users, except that such users shall notify Clovis as soon as reasonably possible if they experience problems securing the Classroom Facility Premises or Parking Premises so that the Parties can work together to resolve the problem.

c. Alterations and Improvements. PG&E shall be permitted to construct training props and related peripheral improvements, both underground and above ground on the Facility Premises. PG&E shall install/provide temporary restrooms in accordance with the requirements of Subsection (d). No other alterations or improvements shall be made to the Property without the advance and express written consent of Clovis, and upon such reasonable terms and conditions as Clovis may require.

The precise plans for the Facility Premises improvements and restrooms (collectively "Improvements") shall be submitted for review and approval by the Fire Chief and General Services Director, and their approval shall not be unreasonably conditioned, withheld or delayed. The Fire Chief's and General Services Director's approval rights shall be limited to determining that the location of the Improvements will not interfere with Clovis' operation of the remainder of the Property, and will notify PG&E of their approval, conditional approval or disapproval of

the Improvements within ten (10) business days after PG&E's submission of the plans. Any conditional approval or disapproval shall be accompanied by a detailed description of what changes would need to be made to the Improvements for them to be approved. Failure by the Fire Chief or the General Services Director to notify PG&E of regarding approval, conditional approval or disapproval of the Improvements within the above-referenced ten (10) business day time period shall be deemed an approval.

The Improvements shall be processed through the Clovis Planning and Development Services Department for required permits, and in its capacity as owner of the Property, Clovis will reasonably cooperate with PG&E in obtaining such permits.

d. Restroom Facilities.

(1) PG&E shall make arrangements, at its sole cost and expense, for the installation of two (2) temporary restrooms on the Property that allow for handicap access in compliance with the Americans with Disabilities Act ("ADA") ("Temporary Restrooms"). The Temporary Restrooms shall be placed on the Property at a location designated by Clovis and approved by PG&E as suitable for its needs in connection with its use of the Facility Premises, and shall be installed prior to the opening of the Facility Premises Improvements. PG&E shall, at its sole cost and expense, make arrangements for a cleaning service to maintain the Temporary Restrooms in a reasonably sanitary condition and stocked with disposable products. PG&E has the right to temporarily remove or lock the Temporary Restroom for any period that it will be absent from the Facility Premises for more than thirty (30) days ("Temporary Removal Period"), but must re-install or unlock the Temporary Restroom when the Facility Premises are in use by or with permission of PG&E. PG&E shall use reasonable efforts to notify Clovis in writing at least fourteen (14) days before a Temporary Removal Period.

(2) Should Clovis construct additional permanent, ADA compliant restrooms in compliance with applicable laws ("Permanent Restrooms"), PG&E shall remove the Temporary Restrooms within thirty (30) days' notice from Clovis. PG&E shall have access to the new Permanent Restrooms and pay to Clovis the additional Restroom Rent as set forth in Section 3. Clovis shall make arrangements for a cleaning service to maintain the new Permanent Restrooms in compliance with all applicable laws, in a reasonably sanitary condition and stocked with disposable products. PG&E shall have reasonable input into the location of the Permanent Restrooms based on its needs in connection with its use of the Facility Premises.

e. Permits, Land Use Approvals, and Licenses. PG&E shall construct and install the Improvements in conformance with all applicable Federal, State, County, or municipal laws, rules, and regulations, and shall obtain any required permits and land use approvals before commencing construction and installation of the Improvements. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises, PG&E shall procure and maintain it throughout the Term. Nothing herein shall be construed to require the City of Clovis to issue a permit or license to PG&E except through applicable procedures, and nothing in this Agreement shall be deemed to pre-commit any discretionary decisions of the City of Clovis.

Notwithstanding any of the foregoing to the contrary, if the permits, approvals and authorizations PG&E is required to obtain to construct and operate the Improvements are determined to PG&E to be infeasible to comply with, PG&E is not required to pursue such permits, approvals and authorizations and at its option may terminate this Agreement upon sixty (60) days' prior written notice to Clovis, this Agreement shall terminate as of the sixtieth (60th) day after delivery of the termination notice, Tenant's obligation to pay any rent, and any other charges owing under the Agreement for any partial month shall be appropriately prorated, and Clovis and PG&E shall each be released from any and all obligations, duties, and liabilities to one another under this Agreement, except for obligations, duties, and liabilities that expressly survive expiration or termination of the Agreement.

f. Compliance with Laws. PG&E shall comply with all statutes, ordinances, regulations and requirements of all applicable governmental entities (including the City of Clovis), relating to PG&E's particular (as opposed to general) use and occupancy of the Premises, whether those statutes, ordinances, regulations and requirements are now in force or are subsequently enacted. PG&E shall not use the Premises or permit the Facility Premises or the Parking Premises, or any portion thereof, to be improved, developed, used or occupied in any manner that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency. Clovis shall comply with all statutes, ordinances, regulations and requirements of all governmental entities (including the City of Clovis), relating to its ownership of the Property, whether those statutes, ordinances, regulations and requirements are now in force or are subsequently enacted, including, but not limited to compliance with all applicable laws for the Administrative Building and related improvements.

g. Waste and Nuisance. PG&E shall not use the Premises, or allow the Premises to be used, in any manner that will constitute a waste, nuisance, or unreasonable annoyance to the neighborhood adjacent to the Property.

h. Maintenance.

(1) PG&E, at its sole cost and expense, shall at all times during the Term keep and maintain the Facility Premises and Parking Premises, and all personal property, buildings, structures and improvements thereon in good order and condition, and free from rubbish, all reasonably satisfactory to Clovis.

(2) Clovis, at its sole cost and expense, shall at all times during the Term keep, maintain and repair the Administrative Building, common areas, restrooms, kitchen, Classroom and all personal property and improvements therein clean, in good order and condition, free from rubbish

i. Utilities. PG&E shall make all arrangements for and be solely responsible for paying for all applicable utilities and services furnished to or used by PG&E or its agents and invitees in connection with the Facility Premises and Parking Premises, including, but not limited to, gas, electricity, water, sewer, telephone, cable, trash collection and for all applicable connection charges. Utilities consumed with use of the Classroom and kitchen shall be covered under monthly Rent.

j. Removal of Buildings and Structures. Upon termination of this Agreement, unless otherwise agreed by PG&E and Clovis, PG&E shall remove PG&E-owned personal property, buildings, structures and other improvements located on the Facility Premises and Parking Premises, excluding the box enclosures for the underground props and conduits, and restore the Facility Premises and Parking Premises to substantially the same condition as existed at the time PG&E took possession of the Facility Premises and Parking Premises, ordinary wear and tear excepted. Upon PG&E's failure to remove PG&E-owned property or improvements from the Facility Premises and Parking Premises in accordance with the terms of this Agreement after thirty (30) days' prior written notice from Clovis, such property or improvements, at the option of Clovis, shall become the sole property of Clovis; or, if Clovis so elects, Clovis may remove such property or improvements from the Facility Premises and Parking Premises, and restore the Facility Premises and Parking Premises to substantially the same condition in which they existed at the time PG&E took possession of the Facility Premises and Parking Premises, reasonable wear and tear excepted, and PG&E shall reimburse Clovis for any such reasonable costs incurred by Clovis with thirty (30) days after Clovis' written demand to PG&E, accompanied by supportive evidence of such expenditures.

5. Taxes, Assessments and Fees.

a. Possessory Interest Tax and Assessments. PG&E shall be solely responsible for any property taxes arising out of PG&E's use or occupancy of the Property. PG&E shall pay before delinquency any and all possessory interest taxes and assessments levied against it or resulting from PG&E's use or occupancy of the Property. Clovis makes no representation as to whether or not taxes are due. Within ten (10) business days after written demand by Clovis, PG&E shall furnish Clovis with satisfactory evidence of these payments.

b. Personal Property Tax. PG&E shall pay before delinquency all taxes, assessments, license fees, and other charges ("Taxes") that are levied and assessed against PG&E's personal property installed or located in or on the Property, if any, and that become payable during the term of this Agreement. Within ten (10) business days after written demand by Clovis by Clovis, PG&E shall furnish Clovis with satisfactory evidence of these payments.

c. Business License Fees. If PG&E owns a business operating in the City of Clovis, PG&E acknowledges its obligation under the Clovis Municipal Code to pay before delinquency any and all business license fees that are levied and assessed against PG&E, pursuant to the Clovis Municipal Code.

6. Indemnification. PG&E hereby shall indemnify, defend, and hold harmless Clovis and Clovis' officials, officers, and employees, agents, and volunteers from and against all liability, claims, suits, damages, losses, costs and expenses, including reasonable attorney's fees, incurred in connection with or arising out of: (1) the use, occupation or control of the Facility Premises and Parking Premises by PG&E, its agents, employees, lessees, or sub-lessees; (2) the use of the Classroom by PG&E, its agents, employees, lessees, or sub-lessees (3) any breach of PG&E's performance obligations under this Agreement; or (4) any acts of negligence or willful misconduct of PG&E or any person or entity claiming through or under PG&E, or PG&E's agents, employees, and contractors.

Notwithstanding any of the foregoing to the contrary, PG&E's obligations in this Section 6 only arise in connection with PG&E's capacity as a tenant under this Agreement and not in its capacity as a utility provider, and shall not arise to the extent such liability, claim, suit, damage, loss, cost or expense is caused by the negligence or willful misconduct of Clovis or Clovis' officials, officers, employees, agents, or volunteers.

7. Insurance Requirements.

a. PG&E Insurance. Subject to PG&E's right to self-insure set forth in this subsection below, PG&E shall, at its sole cost and expense, shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons and for damage to property that may arise from or in connection with the use, occupation or control of the Property by PG&E or its agents, employees, invitees, lessees, or volunteers. The cost of such insurance shall be borne by PG&E.

(1) Minimum Scope of Insurance. Coverage shall be at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage ("Occurrence" from CG0001).

(b) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(c) Property Insurance against all risk of loss to any PG&E property, improvements and betterments.

(2) Minimum Limits of Insurance. PG&E shall maintain limits no less than:

(a) General Liability: \$3,000,000.00 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Workers' Compensation coverage as required by State of California statutory limits.

(c) Employer's Liability: \$3,000,000.00 per accident for bodily injury or disease.

(d) Property Insurance: Full replacement cost with no coinsurance penalty provision.

(3) Deductibles. PG&E represents that it has the financial ability to satisfy the deductible requirements under any policy required by this Agreement.

(4) Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(a) Clovis, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of Premises owned, occupied or used by

PG&E. The coverage shall contain no special limitations on the scope of protection afforded to Clovis, its officers, officials, employees, agents or volunteers.

(b) PG&E's insurance coverage shall be primary insurance as it respects to Clovis, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Clovis, its officers, officials, employees, agents or volunteers shall be in excess of PG&E's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties, shall not affect coverage provided to Clovis, its officers, officials, employees, agents or volunteers.

(d) Coverage shall state that PG&E's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability

(e) Each insurance policy required by this subsection shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Clovis.

(5) Acceptability of Insurers. The insurance described in this subsection is to be placed with an insurer or insurers licensed to do business in California, admitted by the California Insurance Commissioner, and which have a current A.M. Best's rating of not less than A:VII.

(6) Verification of Coverage. Subject to the right of PG&E and Clovis to self-insure, PG&E and Clovis shall furnish the other party with original endorsements or certificates of insurance evidencing the coverage required by this section. The endorsements/ certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf.

(7) Self-Insurance. Notwithstanding anything contained in this subsection, PG&E, or a permitted transferee of PG&E, shall be entitled to self-insure for the insurance coverage required to be carried by PG&E herein. Such self-insurance shall meet the requirements of this subsection and shall be demonstrated by a letter to Clovis from PG&E's or such permitted transferee's Insurance Department confirming PG&E's ability to satisfy such insurance obligation.

b. Clovis' Insurance. Subject to Clovis' right to self-insure through a recognized risk management agency pool, Clovis shall, at its sole cost and expense, procure and maintain, for the duration of this Agreement,

(1) a policy of commercial general liability insurance, insuring against bodily injury, property damage and personal injury occurring in, on or about the Property, in the minimum amount of Three Million Dollars (\$3,000,000.00) combined single limit, on an occurrence basis and submission to PG&E of a letter from Clovis' insurance or risk management department confirming Clovis' ability to satisfy, and its obligation set forth in the Lease, and

(2) a Special Causes of Loss ("all risk") policy at least as broad as the coverage afforded by ISO Form CP 1030, insuring all improvements on the Property (including the Building) except PG&E's personal property and PG&E-owned property. Such insurance shall be in the amount of the full replacement cost (excluding foundations). Said policy shall include coverage for additional costs resulting from debris removal and reasonable amounts for the enforcement of any applicable laws.

c. Waiver of Subrogation Each of PG&E and Clovis hereby grants to the other party a waiver of any right to subrogation which such party or any insurer or self-insurance provider have may acquire against the other party by virtue of the payment of any loss under such insurance, or the occurrence of any loss due to injury to any person or damage to any property that is caused by or results from a risk that is actually insured against, that is required to be insured against under this Agreement, or that would normally be covered by "all risk" property insurance, without regard to the negligence or willful misconduct of the person or entity so released. All of Clovis' and PG&E's repair and indemnity obligations under this Agreement shall be subject to the waiver and release contained in this section. Each party agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the party has received a waiver of subrogation endorsement from the insurer.

8. Environmental Warranties. PG&E warrants and represents that it will not use, generate, manufacture, produce, store, or dispose of, on, under, or about Premises, or transport to or from the Premises, any Hazardous Materials, polychlorinated biphenyls (PCBs), or petroleum (including crude oil or any fraction or derivative thereof), except those uses incidental to the installation, operation and maintenance of any approved improvements on the Property and those contained in the vehicles permitted to park in the Parking Premises and in accordance with all applicable laws and regulations. PG&E shall, at its expense, comply with all applicable laws, regulations, rules and orders governing its use of the Facility Premises and Parking Premises, regardless of when they become or became effective, including without limitation those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish reasonably satisfactory evidence of such compliance upon request of Clovis.

PG&E shall not permit to be piled or stored upon the Property any Hazardous Materials, gun powder, dynamite, gasoline, or explosive substance or material, except where used in the ordinary course of PG&E's business and in compliance with all applicable laws. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Property due to PG&E or its employees or agents, PG&E, at its expense, shall be obligated to clean the Property to the reasonable satisfaction of Clovis and any governmental body having jurisdiction thereover.

PG&E agrees to indemnify, defend and hold harmless Clovis against all liability, cost and expense (including without limitation any fines, penalties, judgments, litigation costs and attorneys' fees) incurred by Clovis as a result of PG&E's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution by PG&E or its employees or agents, regardless of whether such liability, cost or expense arises during or after the Agreement term.

PG&E shall pay all amounts due Clovis under this section, as additional rent, within thirty (30) days after written notification from Clovis that any such amounts become due and owing to Clovis, together with delivery to PG&E of reasonable supporting evidence of such amounts due.

If not timely paid, the amounts due shall bear interest at the rate of ten percent (10%) per annum from the date due.

The term "Hazardous Materials" when used in this Agreement shall mean any hazardous waste, hazardous substance, hazardous materials or toxic substances as defined, as of the Agreement Date, in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Premises, and any substance defined as "hazardous waste" in Health and Safety Code section 25117 or as a "hazardous substance" in Health and Safety Code section 25316, and in the regulations adopted and publications promulgated under these laws. "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation as of the Agreement Date.

9. Liens and Claims. PG&E shall promptly and fully pay for all materials for any improvements installed or constructed on the Property by or on behalf of PG&E and shall promptly and fully pay all persons who perform labor on said improvements. If any mechanics' or materialmen's liens or any other liens or claims for any work done or materials furnished at PG&E's request are filed against the Property, PG&E shall remove the liens and claims at PG&E's own expense. If PG&E fails to remove the liens or claims and any judgment is entered thereon or thereunder, PG&E shall pay that judgment. Should PG&E fail, neglect, or refuse to remove any lien or claim or to pay any judgment in a timely manner, Clovis shall have the right to pay any amount required to release any such liens or claims, or to defend any action brought on the liens or claims and to pay any judgment entered on the liens or claims. Under those circumstances, PG&E shall be liable to Clovis for all costs, damages, reasonable attorneys' fees, and any amounts expended by Clovis in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefore. Clovis may post and maintain upon the Property a notice of non-responsibility.

10. Leasehold Encumbrances. PG&E shall not encumber by deed of trust, mortgage or other security instrument, all or a part of PG&E's interest under this Agreement without the advance and express written consent of Clovis, and upon such terms and conditions as Clovis may require. Any encumbrance existing as of the Agreement Date shall be subject to all covenants, conditions, or restrictions set forth in this Agreement and to all rights and interests of Clovis.

11. Sale or Hypothecation of PG&E's Improvements. PG&E shall not sell or hypothecate any of its fixed improvements upon the Property without first obtaining Clovis' written consent therefor.

12. Successors: Assignment and Subletting; Transfer. This Agreement shall inure to the benefit of and be binding upon the heirs, administrators, executors, successors, and assigns of the Parties hereto, and except to a Permitted Transferee, shall not be assigned or subleased by PG&E without the prior written consent of Clovis, which consent shall be granted or withheld in Clovis' sole discretion. PG&E shall have the right, without notice to or the consent of Clovis, to assign this Agreement or sublet all or any portion of the Premises to any person, corporation or other entity that: (a) is a parent, subsidiary or commonly-controlled affiliate of PG&E; (b) merges or enters into any similar business combination with PG&E; (c) acquires control of PG&E; (d) acquires all

or substantially all of the assets of PG&E at the Premises; or (e) results from any corporate reorganization, including a so-called spin-off, of PG&E ("Permitted Transferee"). The term "controlled" or "control" as used in this Section 12 means ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation, or other majority equity and control interest if the entity is not a corporation.

13. Property Leased "AS IS". The Facility Premises and Parking Premises, including all access points, are leased to PG&E, and PG&E accepts the Facility Premises and Parking Premises, in their existing "AS IS" condition on the Agreement Date. Clovis shall not be required to make or construct any alteration including structural changes, additions or improvements to the Facility Premises and Parking Premises, and shall have no maintenance or repair obligations with respect to the Facility Premises and Parking Premises. PG&E expressly waives the provisions of sections 1941 and 1942 of the California Civil Code and all rights to make repairs at the expense of Clovis as provided in section 1942 of the Civil Code. PG&E acknowledges that neither Clovis, nor any officer, employee or agent of Clovis has made any representation or warranty with respect to the condition of the Facility Premises and Parking Premises, the suitability of the Facility Premises and Parking Premises for the intended use by PG&E, or compliance of the Facility Premises and Parking Premises with the Americans With Disabilities Act of 1990 (or any accessibility guidelines or other regulations promulgated thereunder). Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind Clovis or PG&E, and Clovis and PG&E expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

14. Bankruptcy. Clovis shall have the right to terminate this Agreement by written notice and to take exclusive possession of the Property pursuant to applicable laws in the event: (a) PG&E is adjudged a bankrupt; (b) PG&E becomes insolvent; (c) any action or proceeding for debtor relief of PG&E is commenced by PG&E and not terminated within ninety (90) days after commencement; or (d) PG&E seeks general debtor relief by extrajudicial means. Receipt of rent or other payments from any person for use of the Property shall not constitute a waiver of Clovis' right to terminate as above set forth.

15. Reservations. Clovis reserves for itself and those to whom it grants such right, the right to construct, maintain and operate any existing and new or additional pipes, communication (including, but not limited to, fiber optic) and power transmission facilities upon, over, and beneath the Property, so long as the exercise of such right does not unreasonably interfere with PG&E's rights under this Agreement solely as determined by PG&E. In order to exercise any reserved rights described in this Section 15, Clovis must obtain prior written consent from PG&E, and in exercising any such right Clovis assumes all risk of damage to any PG&E improvements, and promptly after written notice from PG&E will pay PG&E the cost to repair or replace, as determined by PG&E, any items damaged by Clovis' exercise of the above-referenced rights.

Clovis reserves the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying the Property, or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with the exclusive and, perpetual right thereto, without, however, the right to

use or penetrate the surface of, or to enter upon the Facility Premises within five hundred feet (500') of the surface thereof to extricate or remove the same.

16. Subterranean Facilities. The absence of markers, monuments or maps indicating the presence of subterranean facilities, whether belonging to Clovis or otherwise, does not constitute a warranty or representation that none exist. PG&E accepts this Agreement with full cognizance of the potential presence of such, acknowledging that the costs of PG&E's use may increase by reason thereof, and acknowledges that the owner or owners thereof may have acquired the right to continue to maintain such facilities by the passage of time.

17. Damage or Destruction of Property.

a. Clovis' Obligation to Rebuild. Subject to subsections b and c. below, if the Classroom or Administrative Buildings are damaged by fire or any cause whatsoever, Clovis shall diligently, at its expense, repair, restore and rebuild the Classroom and other areas of the Administrative Building that affect PG&E's use of and access to the Classroom, common areas, restrooms and kitchen, so far as practicable and lawful, and subject to available insurance proceeds, to a complete unit of like quality, character and condition as that which existed immediately prior to such damage and shall be constructed by a general contractor duly licensed in California.

b. PG&E's Termination Right. If the Property is damaged or destroyed to an extent that makes the Premises unusable for PG&E's purposes as set forth in this Agreement, and the damage is not capable of being repaired within a period of one hundred eighty (180) days after the date of such damage, as reasonably determined by PG&E, then PG&E may elect to terminate this Lease by giving written notice of such termination to Clovis.

c. Damage Near End of Term. If the Property is damaged or destroyed to an extent that makes the Premises unusable for PG&E's purposes as set forth in this Agreement during the last twelve (12) months of the Term, PG&E may elect to terminate this Agreement, upon the giving of at least thirty (30) days' notice to Clovis.

d. Abatement of Rent. If the Property is damaged or destroyed to an extent that makes the Premises unusable for PG&E's purposes as set forth in this Agreement, PG&E may elect to discontinue occupancy of the Premises until completion of the repair, restoration and rebuilding. If PG&E elects to discontinue occupancy of the Premises (or portions thereof), then the Rent and all other charges shall completely abate during the period commencing on the date of damage until completion of the repair, restoration and rebuilding of the Premises. If, despite such damage, PG&E elects to continue to occupy all or a portion of the Premises, then from the date of such damage until completion of repair, restoration and rebuilding, there shall be an equitable adjustment in Rent and all other charges, taking into account the interference with PG&E's normal conduct of business at the Premises.

e. Temporary Trailer. PG&E shall have the right to place and use a trailer on the Facility Premises for the duration of the reconstruction period for the Classroom and other areas of the Administrative Building required for use of or access to the Classroom, common areas, restroom and kitchen.

18. Eminent Domain. In the event of the taking or condemnation of all or any part of the Property, PG&E may receive compensation only for any taking of or damage to PG&E owned improvements, relocation expenses and goodwill. Any compensation awarded and interest thereon, including the compensation for the land value and interest thereon, shall belong to Clovis.

19. Default.

a. PG&E's Default. The occurrence of any of the following shall constitute a default by PG&E:

(1) Failure to pay rent, insurance premiums, or taxes, or any other sums due hereunder as a result of PG&E's use of the Property within five (5) business days after written notice from Clovis of such delinquency;

(2) Abandonment of the Property, in whole or in part, as defined in California Civil Code Section 1951.3;

(3) Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice has been served upon PG&E.

b. Notice of Default. Notices given under this section shall specify the alleged default and the applicable Agreement provisions and shall demand that PG&E cure the default within the applicable cure period set forth above, or quit the Property.

c. Termination Resulting from Default. Clovis may terminate this Agreement immediately upon written notice to PG&E if PG&E defaults on any obligation under this Agreement and fails to cure such default within the applicable cure period above. In the event of a default by PG&E under this Agreement, Clovis may terminate this Agreement and regain possession of the Property in the manner provided by the laws of unlawful detainer of the State of California in effect at the date of such default. At Clovis' option, if PG&E has breached this Agreement and/or abandoned the Property (as defined in California Civil Code Section 1951.3), in whole or in part, this Agreement shall continue in effect for so long as Clovis does not terminate PG&E's right to possession, and Clovis may enforce all rights and remedies under this Agreement, including the right to recover the rent as it becomes due. Further, Clovis shall be entitled to recover from PG&E damages and to exercise such other rights and remedies as provided to Clovis under the laws of the State of California.

d. Right to Cure at PG&E's Expense. If PG&E commits a default described in this Section 19, Clovis, at any time after five (5) business days following delivery by Clovis of a second default notice to PG&E after expiration of the applicable cure period set forth in subsection a without cure ("Second Cure Period"), may cure the default at PG&E's cost. If following the expiration of the Second Cure Period, Clovis pays any sum or does any act that requires the payment of any sum, the reasonable sum paid by Clovis shall be due from PG&E to Clovis within thirty (30) days after Clovis' written demand for payment to PG&E accompanied by reasonable evidence of Clovis' expenditure, and if paid at a later date, shall bear interest at the rate of ten percent (10%) per annum ("Interest Rate") from the date the written demand for

payment is sent by Clovis until Clovis is reimbursed by PG&E. The sum, together with interest on it, shall be additional rent.

e. Clovis' Default. The occurrence of the following shall constitute an event of default by Clovis (a "Clovis Default") pursuant to this Agreement: the failure by Clovis to perform any obligation pursuant to this Agreement within thirty (30) days after Clovis' receipt of written notice from PG&E specifying such failure or, if the nature of the obligation is such that it reasonably would require more than thirty (30) days to cure such failure, within a time reasonably necessary to cure such failure after Clovis' receipt of such written notice (provided Clovis has undertaken to commence cure of the default within such thirty (30) day period and diligently pursues such efforts to cure to completion).

Upon the occurrence of a Clovis Default, PG&E may, in addition to exercising any other remedies available at law or in equity, at its option and upon written notice, terminate this Agreement.

20. Waiver. No delay or omission in the exercise of any right or remedy of either party on any default by the other party shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Clovis of a delinquent rent payment shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. If such delinquent rent payment is accepted after notice of default and termination has been served, the acceptance shall not constitute a waiver. Either party's consent to or approval of any act by the other requiring such party's consent or approval shall not be deemed to waive or render unnecessary such consent to or approval of any subsequent act by the other party. Any waiver by either party 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 Agreement.

21. Entry and Inspection of Property. Clovis and its authorized representatives shall have the right to enter and inspect the Facility Premises and Parking Premises with at least twenty-four (24) hours advance written notice to determine whether the Premises are in good condition and whether PG&E is complying with its obligations under this Agreement, except unless it is an emergency, Clovis and its authorized representatives must be accompanied by a PG&E representative when inspecting the Facility Premises. PG&E will use reasonable efforts to provide a representative to accompany Clovis and its authorized representatives during any such inspection.

22. Relationship of Parties. Clovis is not, nor shall it become or be deemed to be, a partner or a joint venturer with PG&E by reason of the provisions of this Agreement nor shall this Agreement be construed to authorize either party to act as the agent for the other.

23. Notice. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served on, or given to either party to this Agreement by the other party to this Agreement, shall be in writing and shall be deemed properly delivered, given or served when personally delivered to such party, or in lieu of personal service such notice or other communication shall be deemed properly delivered, given or served on the earliest of (1) the date actually received after deposit in the United States mail, postage prepaid, certified or registered, addressed to the respective party at the address shown below, or after

deposit with a nationally recognized over-night delivery service, which guarantees next business day delivery, addressed to the respective party as shown below. Either party may change its address for purposes of notice by giving written notice of such change of address to the other party in accordance with the provisions of this paragraph, which change of address shall be effective five (5) business days after giving notice thereof. As of the date of this Agreement, the addresses of the parties are set forth below their signatures.

24. Effect of Termination of Agreement. Termination or expiration of this Agreement 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 in case by the terms of this Agreement it is provided that anything shall or may be done after termination or expiration hereof.

25. Entire Agreement and Amendments. This 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 executed by both Parties. This Agreement shall not be modified or amended in any way except in writing signed by the Parties hereto.

26. Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

27. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

28. Attorney's Fees. If either Party commences an action against the other party arising out of or in connection with this Agreement, whether for declaratory or other relief, then the prevailing Party in such action shall be entitled to recover from the other party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing party incurred in connection with such proceeding and any appeal thereof. For purposes of this Agreement, the fees of PG&E's in-house attorneys shall be based on fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter of the law, in law firms in the City of San Francisco. For purposes of this Agreement, the fees of Clovis attorneys shall be based on fees regularly charged by private attorneys contracted by the City in the relevant subject matter of the law, in law firms of Clovis' choosing in the State of California, which may or not be at the rate set under City's existing or future contract for City Attorney services. A Party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other Party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such Party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The costs to which the prevailing party is entitled shall include all costs that are allowable under any applicable statute, including Code of Civil Procedure sections 1032 and 1033.5, as well as non-statutory costs, including costs of investigation, copying costs, electronic discovery costs, electronic research costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees and costs, travel expenses, court reporter fees, transcripts of court proceedings not ordered by the court, mediator fees and attorneys' fees incurred in discovery, contempt proceedings, and bankruptcy, insolvency, liquidation and reorganization proceedings. The non-prevailing Party

shall also pay the attorneys' fees, costs, expenses and disbursements incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. Any such fees, costs, expenses and disbursements incurred prior to judgment, award, or decree may be included in any judgment, award or decree entered in such proceeding in favor of the prevailing Party. Any such fees, costs, expenses and disbursements incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

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

30. Counterpart Copies. The Agreement may be signed in counterpart or duplicate originals, and any signed counterpart or duplicate original shall be equivalent to a signed original for all purposes.

31. Recording of Agreement. Upon request of either Party, the other Party shall join in the execution of a memorandum or short form of this Agreement for recording purposes. The memorandum or short form of Agreement shall incorporate this Agreement by reference and shall describe the Parties hereto, the Premises, and the term hereof.

32. Interpretation. This Agreement shall be governed by California law. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either party. The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon the interpretation of this Agreement. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular, the neuter gender shall include the masculine and feminine genders, and the words "Clovis," "PG&E," and "person" shall include individuals, corporations, partnerships, limited liability companies, associations, other business entities, municipalities and government agencies. Unless the context clearly requires otherwise: (a) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (b) "or" is not exclusive; (c) "include," "includes," and "including" are not intended to be restrictive, and lists following such words shall not be interpreted to be exhaustive or limited to items of the same type as those enumerated. The phrase "business day" shall mean Monday through Friday, excluding days on which banks are legally closed for business in the State of California. If either party consists of more than one person, each such person shall be jointly and severally liable hereunder. Time is of the essence with respect to the performance of every provision of this Agreement. If any provision of this Agreement shall be held to be invalid by a court, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, the remaining provisions shall remain in effect and shall in no way be impaired thereby. Exhibits referred to in this Agreement are attached hereto and incorporated by reference.

33. Negotiation and Mediation. Except as provided in this Section, Clovis and PG&E agree to first negotiate and then mediate with respect to any claim or dispute arising out of or relating to this Agreement or PG&E's use or occupancy of the Property and Premises before resorting to court action, except for those matters excluded below. Either Party may initiate settlement negotiations by providing written notice to the other party, setting forth the subject of the claim or dispute. Clovis and PG&E agree to cooperate in scheduling negotiations and to participate in the settlement negotiations in good faith. If Clovis and PG&E fail to settle such claim or dispute within thirty (30) days after the date of mailing of the notice initiating settlement negotiations or within such additional time period as the parties may agree in writing, the Parties agree to submit the matter to JAMS for mediation.

Either Party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the claim or dispute and the relief requested. Except as provided herein or by written agreement of the parties, the mediation shall be conducted in Fresno, or other agreed upon location, pursuant to the JAMS rules. The Parties will cooperate in selecting a mediator from the JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties agree to participate in the mediation in good faith, and to share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either of the parties, their employees, agents, experts and attorneys, and by the mediator and any other JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, but evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If JAMS should no longer exist at the time the claim or dispute arises, the matter shall be submitted to its successor entity, or if there is no such successor entity, to the American Arbitration Association or other similar organization mutually agreed upon by the parties, and except as provided herein or by mutual agreement of the parties, the mediation rules of such successor or alternate organization shall apply.

Except as may be expressly set forth in any written settlement agreement, should the matter be settled by negotiation or mediation prior to commencing court action, each party shall pay its own attorneys' fees and costs. Neither Party may commence an action until expiration of the negotiation period and completion of the initial mediation session in accordance with this paragraph. If either party commences an action with respect to a claim or dispute covered by this paragraph without first attempting to resolve the matter through negotiation and mediation, or refuses to negotiate or mediate after a request has been made, then that party shall not be entitled to recover attorneys' fees and costs, even if such fees and costs would otherwise be available to that party in such action.

Notwithstanding the foregoing, this Section shall not apply to any action by Clovis against PG&E for non-payment of Rent or to recover possession of the Premises, or any action seeking relief that can only be obtained in a court proceeding. Either party may seek equitable relief to preserve the status quo prior to participating in the negotiation and mediation proceedings required pursuant to this paragraph. In addition, matters that are within the jurisdiction of a probate, small claims, or bankruptcy court are excluded from mandatory negotiation and mediation hereunder.

34. Clovis' Representations and Warranties. Clovis represents and warrants to PG&E that: (a) Clovis possesses good and marketable fee title to the Premises, free and clear of all liens, easements, restrictions or encumbrances thereon that would interfere with PG&E's use of the Premises as provided for in this Agreement; (b) Clovis has full right and lawful authority to execute this Agreement upon the terms and conditions contained herein, the persons signing below on behalf of Clovis are authorized to execute and deliver this Agreement on behalf of Clovis, and this Agreement constitutes a legal and binding obligation of Clovis; (c) upon delivery of the Premises to PG&E, no other party will have any rights to occupy or use the Premises; (d) the provisions of this Agreement do not or will not conflict with or violate the provisions of any existing or future agreements between Clovis and third parties; (e) there are no pending or, to the best of its knowledge, threatened claims or losses against the Premises or Clovis that would adversely affect Clovis' ability to perform its obligations under this Agreement or PG&E's use of the Premises.

35. PG&E Representations and Warranties. PG&E represents and warrants to Clovis that: (a) PG&E has full right and lawful authority to execute this Agreement upon the terms and conditions contained herein and the persons signing below on behalf of PG&E are authorized to execute and deliver this Agreement on behalf of PG&E, and this Agreement constitutes a legal and binding obligation of PG&E; (b) to PG&E's actual knowledge the provisions of this Agreement do not or will not conflict with or violate the provisions of any existing or future agreements between PG&E and third parties; (c) to PG&E there are no pending or threatened claims or losses against PG&E that would adversely affect PG&E's ability to perform its obligations under this Agreement.

As used in this Section 35, "actual knowledge" means the actual, not constructive knowledge of Mark Redford or Jeff Wilding.

[The remainder of this page is blank. Signatures follow on next page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Agreement Date.

**PACIFIC GAS AND ELECTRIC, a
California corporation:**

By: _____
Name _____
Its: _____

Send notices to:

If by certified mail, postage pre-paid, return
receipt requested:

Corporate Real Estate Transactions Department
Pacific Gas and Electric Company
P.O. Box 770000, Mail Code N15G
San Francisco, CA 94177

With a concurrent copy to:

Law Department
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Attn: Senior Director and Lead Counsel
Corporate and Commercial Group (Real
Estate)

If by personal delivery or courier service:

Corporate Real Estate Transactions Department
Pacific Gas and Electric Company
245 Market Street, Room 1550
San Francisco, CA 94105

With a concurrent copy to:

Law Department
Pacific Gas and Electric Company
77 Beale Street, Mail Code B30A
San Francisco, CA 94105
Attn: Senior Director and Lead Counsel
Corporate and Commercial Group (Real
Estate)

**CITY OF CLOVIS, a California municipal
corporation and general law city:**

By: _____
Robert Woolley, City Manager

ATTEST:

By: _____
John Holt, City Clerk

APPROVED AS TO FORM

By: _____
David J. Wolfe, City Attorney

Send notices to:

City of Clovis
Attn: City Clerk
1033 Fifth Street
Clovis, California 93612
Email: John@ci.clovis.ca.us
Phone: 559-324-2060

With a concurrent copy to:

Lozano Smith
City Attorney, City of Clovis
7404 N. Spalding Avenue
Fresno, CA 93720

EXHIBIT A

Legal Description of the Property and Depiction of the Property Administration Building

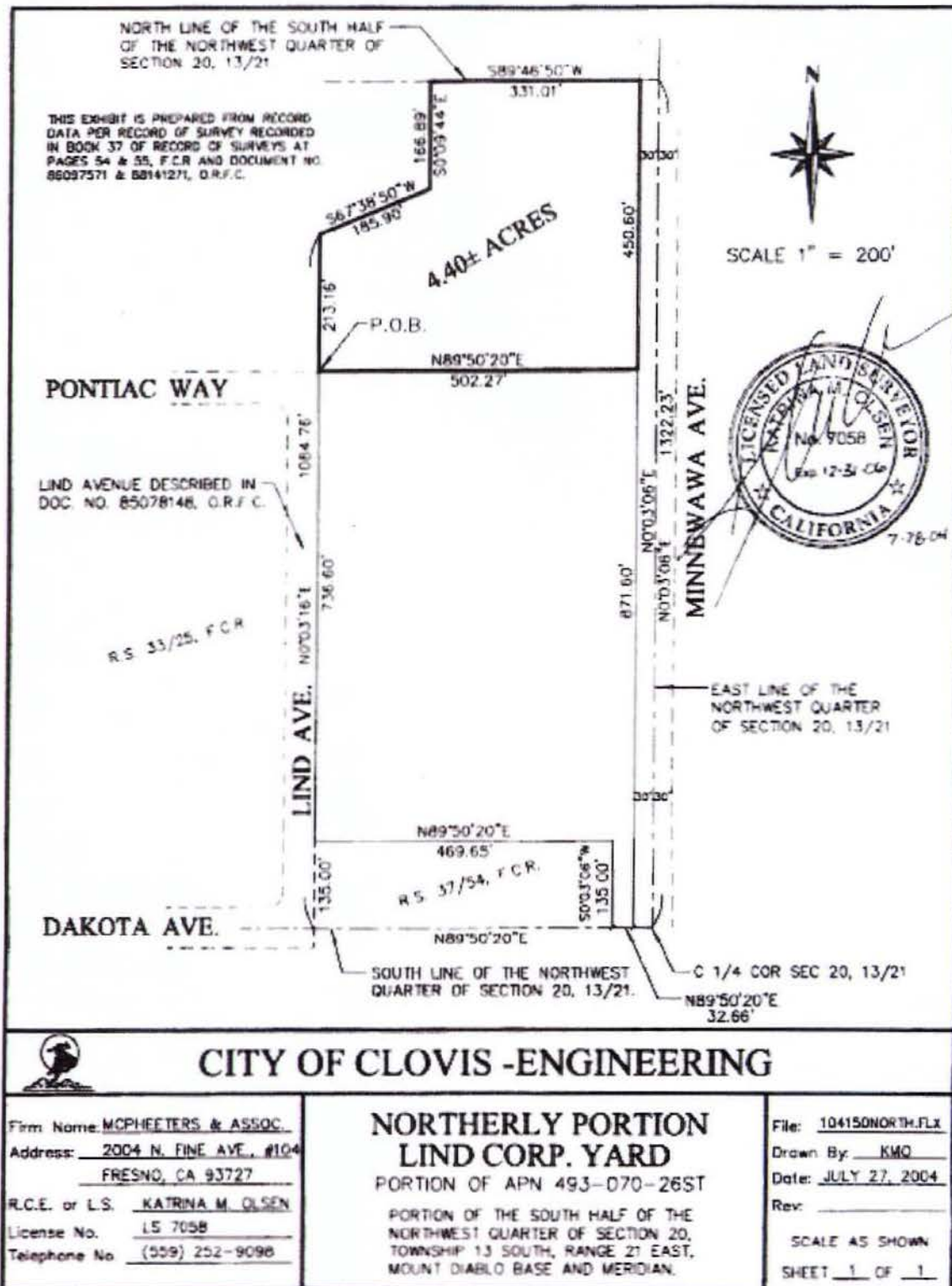
3455 Lind Avenue, City of Clovis, County of Fresno
APN# 493-070-59ST

That portion of the South Half of the Northwest Quarter of Section 20, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, in the City of Clovis, County of Fresno, State of California, described as follows:

COMMENCING at the intersection of the South Line of the Northwest Quarter of said Section 20 with the easterly right-of-way line of Lind Avenue as described in Document No. 85078148, recorded August 8, 1985 in Official Records of Fresno County; thence North 00°03'16" East along said right-of-way line and extension thereof, 871.60 feet to the TRUE POINT OF BEGINNING of this description; thence North 89°50'20" East and parallel with the said South Line of the Northwest Quarter of Section 20, 502.27 feet to the westerly line of Minnewawa Avenue, said line being 30 feet westerly of the East Line of the Northwest Quarter of said Section 20; thence North 00°03'06" East along said westerly line of Minnewawa Avenue and parallel with the East Line of the Northwest Quarter of said Section 20, 450.60 feet to the North Line of the South Half of the Northwest Quarter of said Section 20; thence South 89°46'50" West along said North Line, 331.01 feet; thence South 00°09'44" East, 166.89 feet; thence South 67°38'50" West, 185.90 feet; thence South 00°03'16" West, 213.16 feet to the Point of Beginning.

Containing 4.40 acres more or less.





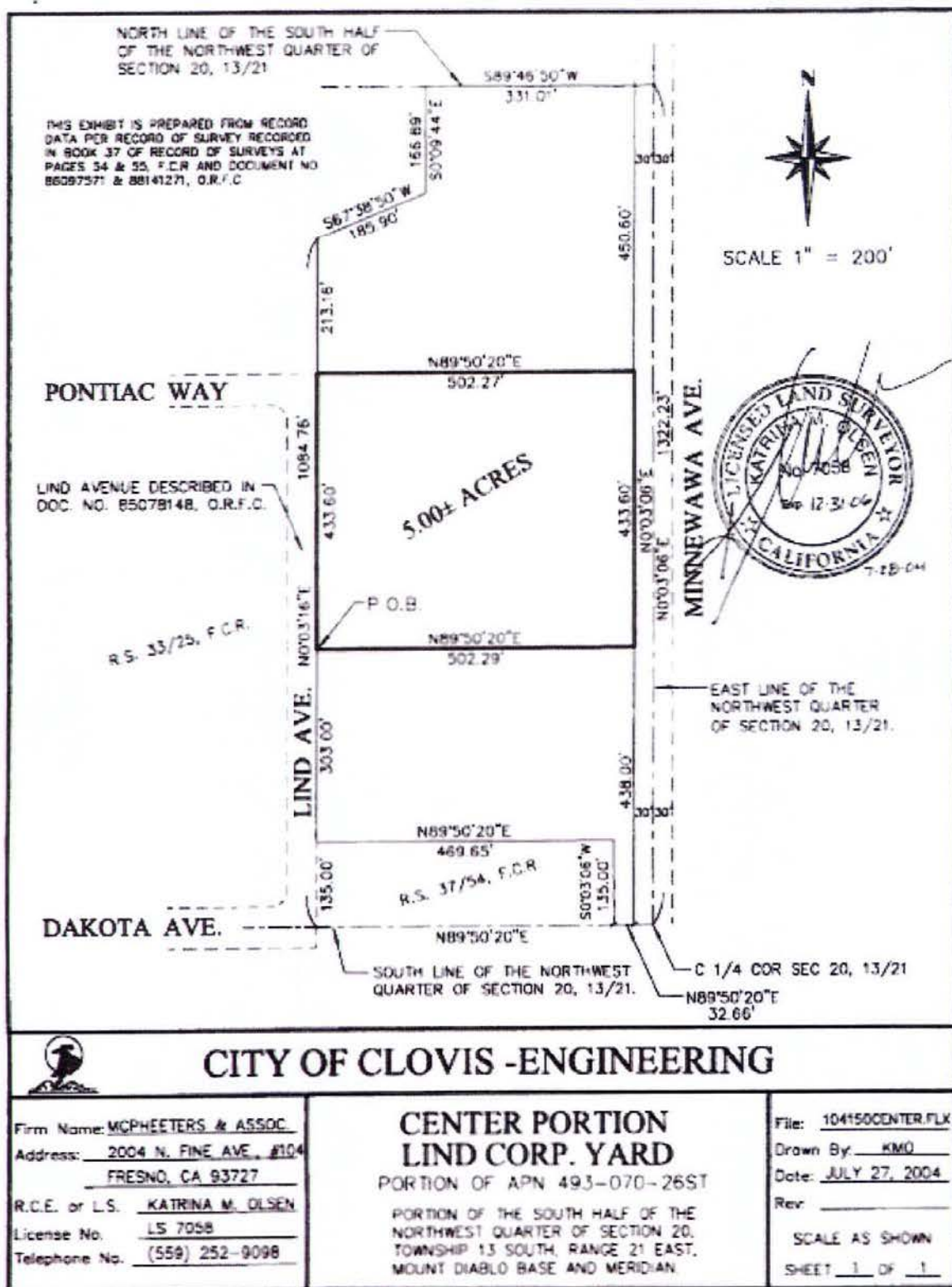
3455 Lind Avenue, City of Clovis, County of Fresno
APN# 493-070-62ST

That portion of the South Half of the Northwest Quarter of Section 20, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, in the City of Clovis, County of Fresno, State of California, described as follows:

COMMENCING at the intersection of the South Line of the Northwest Quarter of said Section 20 with the easterly right-of-way line of Lind Avenue as described in Document No. 85078148, recorded August 8, 1985 in Official Records of Fresno County; thence North $00^{\circ}03'16''$ East along said right-of-way line, 438.00 feet to the TRUE POINT OF BEGINNING of this description; thence North $89^{\circ}50'20''$ East and parallel with the said South Line of the Northwest Quarter of Section 20, 502.29 feet to the westerly line of Minnewawa Avenue, said line being 30 feet westerly of the East Line of the Northwest Quarter of said Section 20; thence North $00^{\circ}03'06''$ East along said westerly line of Minnewawa Avenue and parallel with the East Line of the Northwest Quarter of said Section 20, 433.60 feet; thence South $89^{\circ}50'20''$ West and parallel with the South Line of said Northwest Quarter, 502.27 feet to the extension of the easterly right-of-way line of Lind Avenue; thence South $00^{\circ}03'16''$ West along said easterly right-of-way line and extension thereof, 433.60 feet to the Point of Beginning.

Containing 5.00 acres more or less.





3455 Lind Avenue, City of Clovis, County of Fresno
APN## 493-070-59ST and 493-070-62ST

Clovis Training Overview



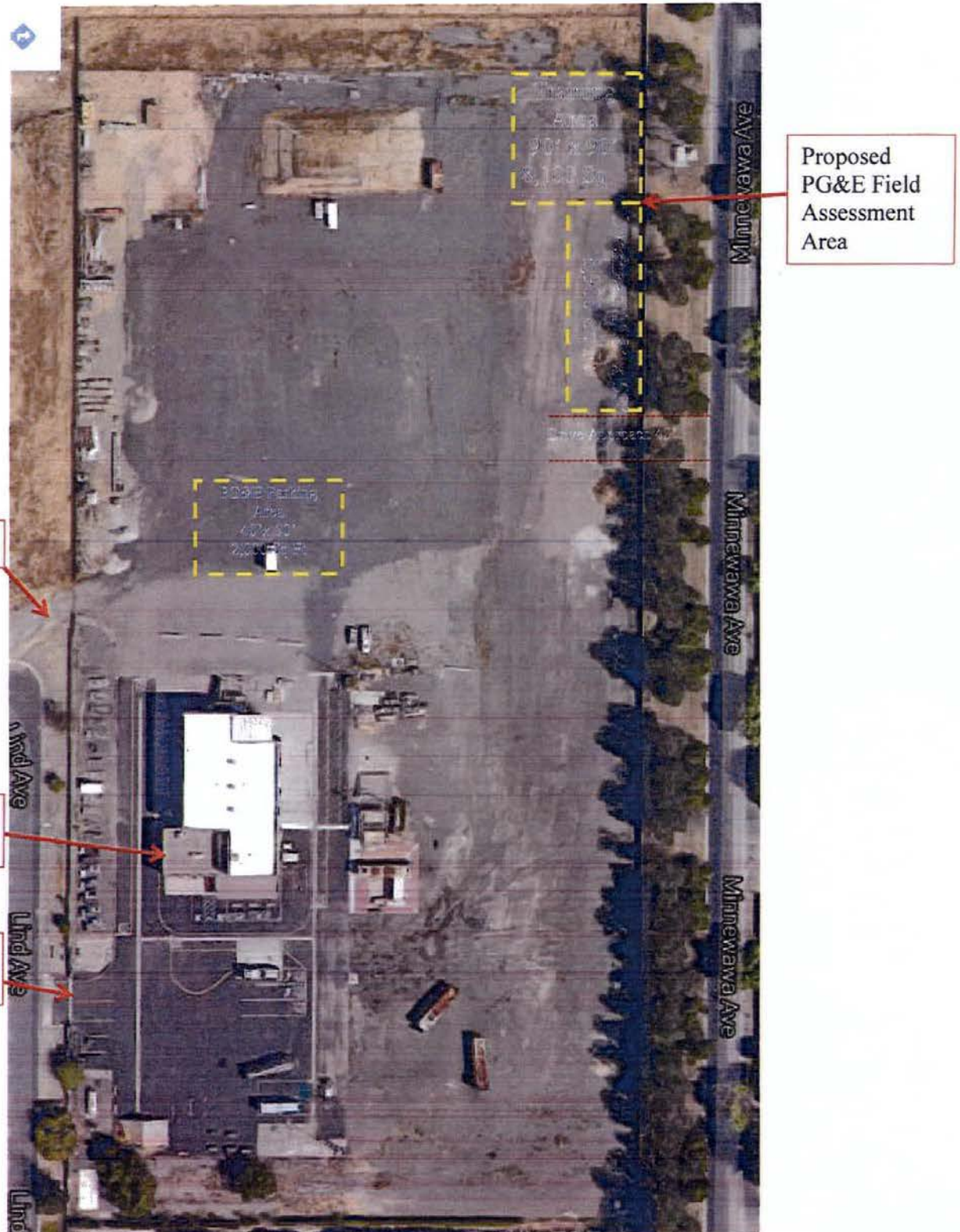
EXHIBIT B

Depiction of Facility Premises



EXHIBIT C

Depiction of Parking Premises and Access to the Property



PROPOSED

Exhibit C

RESOLUTION 16-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING
AMENDMENTS TO THE 2016-2017 GENERAL SERVICES BUDGET**

WHEREAS, the City Council approved the 2016-2017 Budget on June 13, 2016;
and

WHEREAS, the budget for the General Services Department did not include
revenues associated with the Pacific Gas and Electric; and

WHEREAS, the General Services Department is responsible for providing
services including television, computer, Wi-Fi, restroom maintenance and utilities; and

WHEREAS, the lease with Pacific Gas and Electric is for undeveloped land and
will be in effect for ten years; and

WHEREAS, the purchase expense incurred by the General Services Department
for site improvements and maintenance will be paid by the lease with Pacific Gas and
Electric.

NOW THEREFORE, BE IT RESOLVED the City Council of the City of Clovis that
the 2016-2017 Budget be amended as provided in Exhibit A for the "Summary of
Expenditures Department" and the "Summary of Expenditures Fund."

The foregoing Resolution was introduced and adopted at a regular meeting of the
City Council on July 18, 2016 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: July 18, 2016

Mayor

City Clerk

EXHIBIT A

SUMMARY OF REVENUE BY DEPARTMENT

Department

General Services	\$47,000
Total Revenue by Department	\$47,000


SUMMARY OF EXPENDITURES BY FUND

Fund

General Services Fund	\$33,000
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AGENDA ITEM NO: 1-A-1

City Manager: 

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 18, 2016

SUBJECT: Consider Approval - Designation of Voting Delegate and Alternates for the 2016 League of California Cities' Annual Conference and Business Meeting, October 5 – 7, 2016

ATTACHMENT: Annual Conference Voting Procedures Report

CONFLICT OF INTEREST

None.

RECOMMENDATION

That the City Council takes action to designate the Mayor, or another member of the Council, as the City's voting delegate for the League of California Cities' Annual Conference for transacting business at the annual business meeting and that an alternate voting delegate also be designated.

EXECUTIVE SUMMARY

The annual business meeting of the League of California Cities will be conducted in conjunction with the Annual League Conference, October 5 - 7, 2016. In order for the City to cast votes on policy matters coming before the League, it must take action to designate a voting delegate and an alternate voting delegate who will be issued credentials for voting purposes. This authority may not be transferred unofficially and must be accomplished only by action of the City Council.

BACKGROUND

Voting on official business and policy matters of the League of California Cities occurs each year at the annual business meeting, held in conjunction with the Annual League Conference. This year the meeting will be held in Long Beach, California on Friday,

October 7. The voting process for the annual business meeting requires that a voting delegate be designated from each member city by action of the City Council. Credentials will be issued to the voting delegates when they sign in at the Annual Conference in order to enter the area for voting delegates and for actual voting purposes. The attached report from the League of California Cities outlines the procedure to ensure integrity of the voting process.

FISCAL IMPACT


None.

REASON FOR RECOMMENDATION

In order for the City to exercise its membership responsibility for policy direction of the League of California Cities, it is necessary to vote on such matters at the annual business meeting.

ACTIONS FOLLOWING APPROVAL

The League of California Cities will be advised in writing of the City official designated as the voting delegate and the alternate voting delegate for the City of Clovis.

Prepared by: Jacquie Pronovost
Submitted by: Rob Woolley 

Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

**2016 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to the League office by Friday, September 23, 2016. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail: _____

Mayor or City Clerk _____ Phone: _____

(circle one) (signature)

Date: _____

Please complete and return by Friday, September 23, 2016

League of California Cities
ATTN: Kayla Gibson
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: kgibson@cacities.org
(916) 658-8247



AGENDA ITEM NO: 131
City Manager: AA

- CITY OF CLOVIS - REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: July 18, 2016

SUBJECT: Consider Approval – Res. 16-____, Authorizing the City Engineer to enter into agreements with Fresno County for early construction of projects prior to annexation to the City.

ATTACHMENTS:

Attachment 1: Draft Agreement Form
Attachment 2: Resolution

CONFLICT OF INTEREST

None

RECOMMENDATION

Staff recommends approval of Resolution 16-____, authorizing the City Engineer to enter into agreements with Fresno County for early construction of projects prior to annexation to the City.

EXECUTIVE SUMMARY

Due to changes in the County ordinance, developers are no longer allowed to begin construction of projects within the County jurisdiction prior to annexation to the City without a formal agreement between the County and the City. Approval of the resolution would allow for staff to enter into agreements with the County, of the general form depicted in Attachment "A", to allow early construction (grading only) within the County under certain conditions.

BACKGROUND

In the past, developers were allowed to begin construction of residential development projects within the County prior to annexation to the City. The process for obtaining approval for such early construction consisted of a notification to County personnel that early construction was desired. The County then issued a grading voucher, after a cursory review of the project, which allowed the developer to proceed with construction under the direction of the City.

In 2011, Fresno County adopted an ordinance pertaining to early construction of residential developments when the underlying land is in the process of annexation to the City. The ordinance requires that, in order for any early construction to be allowed, the following conditions must be met:

1. Annexation proceedings have commenced by the adoption, by the City, of an appropriate Resolution.
2. Certification by the City Building Official, that the construction will meet all City ordinances and that the City will enforce those provisions.
3. The City has executed an agreement agreeing to the provisions of the County ordinance and indemnifying the County.

The ordinance also imposes a time limit of 120 days for completing the annexation proceedings. If the annexation is denied, or if the proceedings exceed the allowed time limit, the work is to be stopped and the property must be restored to a condition that complies with County Code. The time limit can be extended, in 30-day increments, up to a maximum of 180 days.

Staff has discussed the idea of indemnifying the County as well as the provision in the ordinance requiring the restoration of the property if the annexation is stalled or is unsuccessful. Based on those discussions, staff is proposing to limit the City's risk by only allowing grading prior to annexation and requiring a separate, secured agreement between the City and the developer for the grading work. The form of the proposed agreement with the County is attached as Attachment 1. County Counsel was involved in review of the agreement and has found it to meet the requirements of the County Ordinance.

Currently, the County requires a Board approval of each early construction request. However, in order to streamline the process, upon approval by the City Council of the proposed resolution, County staff will bring a similar item to the Board of Supervisors which will allow staff to approve such requests.

REASONS FOR RECOMMENDATION

- At-risk early construction within the City is routinely allowed on City development projects where plans are developed to a point where the risk is minimized.
- Early construction in the County provides another option for developers to expedite their projects when needed.
- The agreement meets the requirements of the County Ordinance and, based on the point in the annexation process that must be reached in order for the agreement executed, and the construction is limited to grading only, the City's risk is minimized.

ACTIONS FOLLOWING APPROVAL

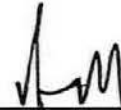
- Staff will forward the approved Resolution to County staff to use as the basis of a Board item allowing County staff to execute early construction agreements with the City.
- Staff will execute agreements for new projects, as warranted, and forward to the County for approval.

Submitted by:



Mike Harrison
Interim City Engineer

Recommended by:



Dwight Kroll, AICP
Director of Planning and
Development Services

C:\Users\mikeh\Documents\CC Staff Report Early Construction in County.doc

**AGREEMENT BETWEEN COUNTY OF FRESNO AND CITY OF
CLOVIS TO PERMIT LIMITED DEVELOPMENT OF PROPERTY IN
PROCESS OF ANNEXATION TO CITY OF CLOVIS
[Fresno County Ordinance Code section 15.04.140]**

THIS AGREEMENT is entered into this ____ day of _____, 2016, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, (hereinafter "COUNTY") and the CITY OF _____, (hereinafter "CITY"), a municipal corporation of the State of California.

WITNESSETH:

WHEREAS, on _____ [insert date] CITY approved Resolution Number _____ ("Resolution No. _____"), which approved Tentative Subdivision Map Application No. _____, ("TM No. _____") also referred to as the "Project." A true and correct copy of Resolution No. _____ is attached hereto and incorporated herein by reference as Exhibit "A".

WHEREAS, Resolution No. _____ also adopted a _____ [Insert type of environmental document – i.e., MND or EIR] for TM No. _____, and City represents that it complied with the requirements of applicable law, including but not limited to the California Environmental Quality Act (CEQA) in approving TM No. _____.

WHEREAS, the real property covered by TM No. _____ (the "Property"), is located within the unincorporated territory of the Fresno County, but within the Sphere of Influence of the CITY. A true and correct copy of the legal description of the Property is attached hereto and incorporated herein by reference as Exhibit "B".

WHEREAS, on _____ [insert date] CITY adopted Resolution, No. _____ ("Resolution, No. _____") requesting a proposed reorganization that includes the annexation of the Property into the CITY. A true and correct copy of Resolution, No. _____ is attached hereto and incorporated herein by reference as Exhibit "C".

1 **WHEREAS**, on _____ [insert date] CITY filed a resolution of application "the
2 "Resolution of Application") with the Fresno County Local Agency Formation
3 Commission ("LAFCo"), requesting approval of a proposed reorganization to annex the
4 Property to the CITY. A true and correct copy of the Resolution of Application is
5 attached hereto and incorporated herein by reference as Exhibit "D".

6 **WHEREAS**, the owner of the Property is _____ (the "Owner").

7 **WHEREAS**, CITY has informed COUNTY that the Project to be constructed on
8 the Property includes a ____ unit residential lot subdivision, the precise, engineered
9 plans for which have been submitted to the CITY's Planning and Building Department;
10 and

11 **WHEREAS**, section 15.04.140 of the Fresno County Ordinance Code, permits,
12 at the election of an owner or permittee, construction activities and improvements,
13 limited to underground utilities, grading, street improvements and model home
14 construction for residential development and/or underground utilities, grading and
15 street improvements for other than residential development on any parcel of land in
16 any zoning district within the unincorporated area of the County, to be exempted from
17 the provisions of Chapter 15.04 of the Fresno County Ordinance Code, when certain
18 conditions exist.

19 **WHEREAS**, COUNTY and CITY desire to enter into a written agreement to
20 provide for the satisfaction of the requirements Section 15.04.140 of the Fresno
21 County Ordinance Code.

22 Now, therefore, for good and value consideration the receipt of which is hereby
23 acknowledged by the parties hereto, the COUNTY and CITY hereby agree as follows:

24 1. RECITALS.

25 The foregoing recitals are true and correct.

26 ///

2. OWNER'S REQUEST THAT CITY ISSUE PERMITS.

The CITY represents that the Owner has requested that the CITY issue permits to allow the Owner to engage in the grading of land (the "Improvements"), prior to annexation of the Property to the CITY.

3. EXERCISE OF JOINT POWERS.

It is the mutual intent of the CITY and COUNTY that, subject to the provisions of Section 15.04.140 of the Fresno County Ordinance Code, and the provisions of this Agreement, the CITY shall have the authority, and the sole obligation, to enforce each and every ordinance adopted by the CITY (the "Ordinances"), as well as State and Federal laws and regulations relating to construction of structures and division of land, to ensure that any and all Improvements constructed on, in, or about the Property prior to annexation of the Property to the CITY, shall comply with such Ordinances, laws, and regulations. To that end, the CITY and COUNTY acknowledge and agree that they each have the authority, under their respective police powers conferred upon each of them under California Constitution, Article XI, section 7, to enforce within their respective limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, and that under the Joint Exercise of Powers Act, Government Code section 6500 et seq., they may agree that the CITY shall be enabled and required to enforce such Ordinances, and State and Federal laws and regulation within such area proposed for annexation into the City pursuant to such police powers in such area, which such area is presently in the unincorporated area of the County, and that such authority is hereby conferred upon the City under this Agreement.

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4. CITY'S COMPLIANCE WITH APPLICABLE LAW

The CITY agrees to abide by the provisions of the Chapter 15.04 of the Fresno County Ordinance Code, including the provisions of Section 15.04.140 thereof, with respect to the Property. The CITY shall require in connection with the issuance of the aforementioned permits that the Owner or permittee shall comply with all CITY ordinances, State and Federal laws, and regulations relating to construction of structures and division of land, including the securement of permits as would be required as if the Property were within the incorporated area of the CITY. CITY shall also comply with the requirements of CEQA prior to the issuance of permits for Improvements allowed by this Agreement. For the purposes of compliance with CEQA prior to the issuance of such permits, CITY and COUNTY agree that CITY shall serve as the lead agency.

5. CERTIFICATION OF CITY BUILDING OFFICIAL.

Within five (5) CITY business days of the date this Agreement is signed by the authorized representative of the County on behalf of the COUNTY (hereafter referred to as the "Effective Date of this Agreement"), the CITY's building official shall certify in writing to COUNTY that each of the Improvements constructed on, in, or about the Property prior to annexation of the Property to the CITY will meet all CITY ordinances upon annexation of the Property into the City, and that the CITY will enforce the provisions thereof pursuant to the City's Ordinances, and applicable State and Federal laws and regulations relating to construction of structures and division of land. The CITY agrees that the COUNTY may rely on the statements made in this Certification and is not required to independently investigate or verify the accuracy or completeness of the statements made by the CITY's Building Official in such written certification. The written certification shall be made by using the form attached hereto as Exhibit "E", which incorporated herein by reference.

6. STOP WORK ORDERS.

If the CITY issues permits for the Improvements prior to annexation of the Property to the CITY, the CITY's Building Official shall issue a stop work order for the work authorized by such permits if any of the following occur:

A. The annexation proceedings requested by CITY by the Resolution of Application, are not completed within one hundred twenty (120) days from the Effective Date of this Agreement, subject to the provisions of Section 7 of this Agreement.

B. Annexation of the Property to the CITY is denied by the LAFCo.

C. The construction of the Improvements does not comply with the CITY ordinances.

Within five (5) CITY business days of the issuance of a stop work order, the CITY shall deliver a true and correct copy of the stop work order to the COUNTY, accompanied by a notice referencing this Agreement.

If the Owner and other parties subject to the stop work order do not comply with the stop work order, CITY shall promptly take all actions necessary to ensure compliance with that order, including but not limited to initiating and prosecuting litigation against any person or persons in violation of the order to ensure compliance.

The CITY shall also promptly take all actions necessary to bring the Improvements constructed on the Property into compliance with the provisions of Chapter 15.04 of the Fresno County Ordinance Code. All expenses incurred to bring the Property into compliance with the provisions of Chapter 15.04 of the Fresno County Ordinance Code shall be borne solely by the CITY. Thereafter, any further construction on the Property shall be in accordance with Title 15 of the Fresno County Ordinance Code.

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1 7. EXTENSIONS OF TIME.

2 To the extent permitted by section 15.04.140 of the Fresno County Ordinance
3 Code, the COUNTY's building official, upon receipt of a written request from the CITY
4 building official prior to the expiration specified by Section 6.A, may grant up to two (2)
5 individual extensions of time to complete annexation proceedings not to exceed thirty
6 (30) days each. If the COUNTY building official grants two such thirty (30) day
7 extensions to the CITY, and annexation proceedings are not completed within a total
8 of a one hundred eighty (180) day period from the Effective Date of this Agreement, a
9 request for additional time to complete the annexation may be made to, and may, in its
10 sole and exclusive discretion, be approved by the Fresno County Board of
11 Supervisors. A request for extension made to the Board of Supervisors must be made
12 prior to the expiration a total of a one hundred eighty (180) day period from the
13 Effective Date of this Agreement.

14 8. CERTIFICATE OF APPROVAL OF ANNEXATION.

15 Within five (5) CITY business days of approval by LAFCo of the annexation of
16 the Property to the CITY, the CITY shall transmit a true and correct copy of the
17 executed Certificate of Completion to the COUNTY.

18 9. CITY'S INDEMNIFICATION OF COUNTY.

19 The CITY hereby agrees to save, indemnify, hold harmless and, at COUNTY's
20 request, defend COUNTY, its officers, agents, and employees, from and against all
21 legal actions of whatever form, expenses, demands, liabilities, claims, costs (including
22 but not limited to court costs and attorney's fees), or damages of any nature
23 whatsoever occurring or resulting to COUNTY, including, but not limited to, an award
24 of attorney's fees and costs to the person, organization or entity bringing the cause of
25 action, or their officers, agents, and employees, arising from, resulting from, or in
26 connection the performance, or failure to perform, of CITY, its officers, agents, or
27 employees under this Agreement.

When defending COUNTY, CITY shall pay all attorneys' fees and costs related to the defense in any action brought against the COUNTY. CITY shall defend COUNTY through counsel selected by CITY and shall keep the COUNTY fully informed as to the progress of such defense. COUNTY shall cooperate with CITY in the defense of the claim.

10. NOTIFICATIONS AND COOPERATION BY COUNTY.

COUNTY shall notify CITY within seven (7) COUNTY business days of its receipt of any demand, claim, action, proceeding, or litigation in which COUNTY is to be indemnified and held harmless by CITY. If COUNTY requests that CITY defend COUNTY, it shall notify CITY in writing within ten (10) COUNTY business days of its receipt of any such demand, claim, action, proceeding, or litigation. COUNTY shall cooperate in such defense.

11. COUNTY PARTICIPATION IN DEFENSE.

Nothing contained herein shall prohibit COUNTY, in its sole discretion, from participating in the defense of any demand, claim, action, proceeding, or litigation over and above representation by legal counsel hired by CITY, or from participating in the defense of any demand, claim, action, proceeding, or litigation. If COUNTY elects to also defend, it shall do so in good faith and COUNTY shall bear its attorney's fees and costs. Except as otherwise provided in this paragraph, in no event shall COUNTY's participation in the defense of any demand, claim, action, proceeding, or litigation affect the obligations imposed upon CITY in Section 9 of this Agreement.

12. INSURANCE.

CITY agrees that, during the term of this Agreement, CITY shall ensure that its activities under this Agreement shall be covered by CITY's self-insurance program, applying to such activities such minimum coverages and amounts thereof, and maximum deductibles, as are required or provided for CITY's operations, and that

CITY shall, if requested from time to time by COUNTY, provide written evidence of such self-insurance coverage to COUNTY in such form and manner that would be reasonably satisfactory to COUNTY.

13. NON-ASSIGNMENT.

Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

14. MODIFICATION.

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

15. NOTICES.

Any and all notices between COUNTY and the CITY provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party, at such addresses set forth below:

COUNTY

CITY

Department of Public Works and Planning

City of Clovis

Attention: Chief Building Inspector

Attention: City Manager

2220 Tulare Street, Suite 600

1033 Fifth Street

Fresno, California 93721

Clovis, CA 93612

16. NO THIRD PARTY BENEFICIARIES.

This Agreement has been entered into solely for the benefit of the parties hereto. Nothing in this Agreement is intended to benefit or confer any rights or remedies on any other person or parties.

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17. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute together the same document.

18. APPLICABLE LAW AND VENUE.

This Agreement is made and entered into in the State of California and shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be governed by, and construed, and enforced in accordance with the laws of the State of California. Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California, unless otherwise agreed to in writing by both parties hereto.

19. LEGAL AUTHORITY

Each individual executing or attesting this Agreement hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of their respective public agency in accordance with applicable law; and (2) that this Agreement is binding upon each public agency.

20. SEVERABILITY.

If any provision of this Agreement is determined to be illegal, invalid, void, or unenforceable in a final judgment by a court of competent jurisdiction, each and every other provision hereof shall remain in full force and effect, unless this severability provision would deny one or more of the parties to the Agreement of the material benefits of the Agreement, in which case the entire Agreement shall have no force and effect.

21. HEADINGS.

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other.

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22. INTERPRETATION OF AGREEMENT.

The parties hereby acknowledge that they and their respective counsel have cooperated in the drafting and preparation of this Agreement, for which reason this Agreement shall not be construed against any party as the drafter thereof.

23. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the CITY and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement. In the event of any inconsistency in interpreting the documents which constitute this Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Agreement (excluding Exhibits "A", "B", "C", "D", and "E"), and (2) Exhibit "E", Exhibit "B", Exhibit "D", Exhibit "A", and Exhibit "C".

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IN WITNESS WHEREOF, CITY and COUNTY hereby execute this Agreement.

CITY OF CLOVIS:

COUNTY OF FRESNO

By _____

By _____
Chair, Board of Supervisors

Print Name: _____

Title: _____

Date: _____

Date: _____

BERNICE E. SEIDEL, Clerk
Board of Supervisors

APPROVED AS TO LEGAL FORM:

By _____

Date: _____

By _____

DAVID J. WOLFE, CITY ATTORNEY

APPROVED AS TO LEGAL FORM:
DANIEL C. CEDERBORG, COUNTY
COUNSEL

By _____

REVIEWED AND RECOMMENDED
FOR APPROVAL:

STEVEN E. WHITE, Director
Department of Public Works and
Planning

By _____

EXHIBIT "E"

**CERTIFICATION OF CITY OF CLOVIS BUILDING OFFICIAL
REGARDING SATISFACTION OF SECTION 15.04.140
OF FRESNO COUNTY ORDINANCE CODE**

I, _____ [fill in name of CITY building official], declare that the following facts are true and correct in my capacity as such [fill in name of CITY building official]:

1. I am employed by the City of Clovis ("CITY") as _____ [insert job title]. In this position I serve as the City's Building Official.
2. As the CITY's building official I am familiar with the CITY's applicable grading requirements for residential development projects, including tentative subdivision maps approved by the CITY.
3. I am familiar with Tentative Map Application No. _____, ("TM No. _____") also referred to as the "Project" approved by the CITY.
4. The real property covered by TM No. _____ (the "Property"), is located within the unincorporated territory of the Fresno County, but within the Sphere of Influence of the CITY. A true and correct copy of the legal description of the Property is attached hereto and incorporated herein by reference as Attachment "1".
5. The Project to be constructed on the Property includes the planned construction of a _____, the precise, engineered plans for which have been submitted to the CITY's Planning and Building Department; and
6. As the CITY's Building Official, on behalf of the CITY, I certify that the CITY will diligently take all necessary and appropriate actions to ensure that any grading or related improvements constructed on the Property will satisfy all CITY ordinances and that the CITY will enforce the provisions thereof to the full extent permitted by law.
7. I am authorized to provide this written certification on behalf of the CITY to the COUNTY.
8. I acknowledge on behalf of the CITY that the COUNTY may rely on the statements made in this Certification for purposes of satisfying applicable COUNTY ordinances and the Agreement to Permit Limited Development of Property in Process of Annexation to City of Clovis between the CITY and COUNTY, and the COUNTY is not required to independently investigate or verify the accuracy or completeness of the statements I make in this Certification.

DATED: _____

[PRINT NAME]

[PRINT TITLE]

RESOLUTION 16 _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS AUTHORIZING THE CITY ENGINEER TO ENTER INTO AGREEMENTS WITH FRESNO COUNTY FOR EARLY CONSTRUCTION OF PROJECTS PRIOR TO ANNEXATION

WHEREAS, City desires to allow developers the option to begin construction of their projects while the land lies within Fresno County but is in the process of being annexed to the City; and

WHEREAS, County Code requires an agreement between the City and the County in order for early construction to be approved on land lying within the County's jurisdiction; and

WHEREAS, the City and County are in agreement with the terms in the agreement form, Exhibit "A"; and

WHEREAS, Execution of the required agreement at staff level will streamline the approval process

NOW THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the City Engineer to execute agreements, in the general form of the draft agreement form attached as Exhibit "A" for early construction of development projects.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on July 18, 2016, by the following vote, to wit:

AYES

NOES

ABSENT

Date: _____, 2016

Nathan Magsig, Mayor

Attest:

John Holt, City Clerk