



# CITY of CLOVIS

## AGENDA • CITY COUNCIL MEETING

Council Chamber, 1033 Fifth Street, Clovis, CA 93612 (559) 324-2060  
[www.cityofclovis.com](http://www.cityofclovis.com)

July 1, 2024

6:00 PM

Council Chamber

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

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

### **Written Comments**

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

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



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

## CALL TO ORDER

## FLAG SALUTE - Councilmember Basgall

## ROLL CALL

## PRESENTATIONS/PROCLAMATIONS

1. Update on the Alisa Ann Ruch Burn Foundation Champ Camp support from the Clovis Fire Department and the Annual Cops and Kids Sports Camp sponsored by the Clovis Police Department and Recreation.

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

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

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

2. Administration - Approval - Minutes from the June 17, 2024, Council Meeting.
3. Administration - Approval – Authorize the City Manager to enter into an agreement with the Jamison Family Community Property Trust for the lease of 1625 Shaw Ave., Suites 101 & 103, for approximately \$205,000 per year.
4. Administration - Approval – Waive Normal Purchasing Process and approve the purchase of replacement desktop computers and servers using competitively bid contracts with purchasing provisions for California State and Local government agencies.
5. Administration - Approval - Authorize the renewal of the next generation antivirus software subscription from the Center for Internet Security (CIS) in the amount of \$72,105.00 per year for three years.
6. Administration – Approval – Authorize the Mayor to enter into a non-binding agreement, adding Clovis to a list of regional partners seeking to attract companies and jobs associated with the semiconductor industry.
7. General Services - Approval – Res. 24-\_\_\_\_, Approving a Side Letter Agreement with the Transit Employees Bargaining Unit (TEBU) to Include Part-Time/Extra-Help Bus Drivers and Part-Time/Extra-Help Van Drivers; and Authorizing the City Manager to Execute the Agreement.

- [8.](#) General Services – Approval - Reallocation of Capital Improvement Program Funds for Senior Center Tenant Improvements.
- [9.](#) General Services – Approval - Claim Rejection of the General Liability Claim on behalf of Natilidawn Gonzales.
- [10.](#) Planning and Development Services – Approval – Final Acceptance for CIP 24-03 ADA Curb Return Ramps 2024 – T2.
- [11.](#) Planning and Development Services – Approval – Final Acceptance for Tract 6245, located at the northeast corner of Ashlan and Locan Avenues (Wilson Premier Homes).
- [12.](#) Public Utilities – Approval – Waive Formal Bidding Procedures and Authorize the City Manager to Execute a Contract with HF&H Consultants, LLC to Assist in the Preparation and Evaluation of a Request for Proposals for Recycling and Organics Collection Services for the Base amount of \$59,980.

## COUNCIL ITEMS

- [13.](#) Consider Approval - City of Clovis Youth Commission Bylaws.  
  
**Staff:** Chad McCollum, Econ. Development, Housing and Comm. Director / Noor Riar, Co-Chair / Eli Pugliese, Co-Chair  
**Recommendation:** Approve
- [14.](#) Consider – Update and Recommendations from the Historic Preservation Committee.  
  
**Staff:** John Holt, City Manager  
**Recommendation:** Consider Update and Provide Direction

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

- [15.](#) Receive and File - Summary of additional stakeholder meetings relating to Development Impact Fees for Fiscal Year 2024-2025.  
  
**Staff:** Sean Smith, Supervising Civil Engineer  
**Recommendation:** Receive and File
- [16.](#) Consider Adoption - **Ord. 24-10**, OA 2024-001, A request to amend the Development Code to modify the description R-2 (Medium-High Density Residential) Zone District to increase the maximum density from 15 to 20 dwelling units per acre) and to modify the R-3 (Multi-Family Residential, High Density) Zone District to increase the minimum density from 15.1 to 20.1 units per acre. **(Vote 4-0-1 with Councilmember Bessinger absent)**  
  
**Staff:** Briana Parra, City Clerk  
**Recommendation:** Adopt
- [17.](#) Consider Approval – Cost-of-Living Increase and Updated Salary Schedule for Executive Management Employees.  
  
**Staff:** Shonna Halterman, General Services Director  
**Recommendation:** Approve

**PUBLIC HEARINGS** - A public hearing is an open consideration within a regular or special meeting of the City Council, for which special notice has been given and may be required. When a public hearing is continued, noticing of the adjourned item is required as per Government Code 54955.1.

18. Consider items associated with fees under the Planning and Development Services Department and find that the project is exempt from further environmental review under Section 15061(b)(3) of the California Environmental Quality Act Guidelines. City of Clovis, applicant.

a. Consider Approval - Res. 24-\_\_\_\_, A request to approve a resolution amending Plan Check, Inspection Services, Encroachment Permits, and Community Investment Program Rates.

b. Consider Approval - Res. 24-\_\_\_\_, A request to approve the 2024 City of Clovis Planning Division fee schedule.

**Staff:** Sean Smith, Supervising Civil Engineer / George González, Senior Planner

**Recommendation:** Approve

### **CITY MANAGER COMMENTS**

### **COUNCIL COMMENTS**

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

19. Government Code Section 54956.9(d)(1)  
CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Case Name: Desiree Martinez v. City of Clovis, et al., Case No. F082914

20. Government Code Section 54956.9(d)(1)  
CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION IN RE: National Prescription Opiate Litigation; U.S. District Court, N.D. Ohio, Eastern Division; Case No.1:17-MD-2804.

21. Government Code Section 54957  
PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT  
Title: City Manager

### **RECONVENE INTO OPEN SESSION AND REPORT FROM CLOSED SESSION**

### **ADJOURNMENT**

### **FUTURE MEETINGS**

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

July 2 - Aug. 4 Summer Recess  
August 5, 2024 (Mon.)  
August 12, 2024 (Mon.)  
August 19, 2024 (Mon.)

CLOVIS CITY COUNCIL MEETING

June 17, 2024

6:00 P.M.

Council Chamber

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

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

PUBLIC COMMENTS – 6:02

Mayor Ashbeck congratulated Clovis East alum Bryson DeChambeau, a professional golfer, on his recent victory of the 2nd U.S. Open.

Manjot “Moe” Singh, resident, spoke regarding concerns for his smog shop.

Rav Singh, resident, addressed the recently adopted Tobacco license ordinance and requested an additional 30-day extension for those businesses that were not noticed.

CONSENT CALENDAR – 6:15

Motion by Councilmember Basgall, seconded by Councilmember Mouanoutoua, that the items on the Consent Calendar be approved, including the waiver of the reading of the ordinance. Motion carried 4-0-1 with Councilmember Bessinger absent.

- 1. Administration - Approved - Minutes from the June 10, 2024, Council Meeting.
2. Administration - Adopted - Ord. 24-09, Amending Various Sections of the Municipal Code Relating to Development Fees. (Vote: 5-0)
3. Finance – Received and Filed – Investment Report for the Month of February 2024.
4. Finance – Received and Filed – Treasurer’s Report for the Month of February 2024.
5. General Services – Approval – Res. 24-72, Adopting the FY 2024-25 Consolidated Transportation Service Agency (CTSA) Operations and Program Budget (OPB) for Round Up Transit Services.
6. General Services – Authorize the City Manager to Approve a Reinstated Full-Time Public Safety Dispatcher at Step 4 of the Salary Range with an Effective Date of April 1, 2024.
7. Planning and Development Services – Approval – Consultant List from which Professional Consultants may be selected for Fiscal Year 2024-2025.
8. Public Utilities - Approval – Res. 24-73, Authorize the Submittal of an Application Under the San Joaquin Valley Air Pollution Control District (SJVAPCD) Public Benefit Program - New Alternative Fuel Vehicle Purchase and Authorize the City Manager to be the Contract Authority; Approval – Waive Formal Bidding Requirements and Authorize the Purchase of a 2024 Chevrolet Silverado 3WT EV Crew Cab from Hedricks Chevrolet in the Amount of \$68,940.

**ADMINISTRATIVE ITEMS – 6:16**

6:16 ITEM 9 - CONSIDER POLICY DIRECTION ON A REQUEST FOR 18 RURAL COUNTY RESIDENTS SEEKING ANNEXATION (APPROXIMATELY 38 ACRES) TO THE CITY OF CLOVIS FOR PROPERTIES LOCATED NEAR THE SOUTHEAST CORNER OF PERRIN ROAD AND N. SUNNYSIDE AVENUE. QUAIL RUN 18 ASSOCIATION, APPLICANT; RICH WATHEN AND JARED CALLISTER, REPRESENTATIVES.

Due to a campaign contribution received, Mayor Ashbeck recused herself from the above item.

Richard Wathen, resident, discussed the implications of the proposed annexation and its potential impact on 18 homes within the area.

Motion for approval by Councilmember Basgall, seconded by Councilmember Pearce. Motion carried 3-0-1-1 with Councilmember Bessinger absent and Mayor Ashbeck recusing.

**PUBLIC HEARINGS – 6:40**

6:40 ITEM 10 - CONDUCT A PUBLIC HEARING AND CONSIDER APPROVAL - **RES. 24-74**, A RESOLUTION DECLARING THE RESULTS OF THE PROPERTY OWNER PROTEST BALLOTING PROCEEDINGS AND APPROVING THE ENGINEER'S REPORT FOR ASSESSMENT DISTRICT 95-1 (BLACKHORSE ESTATES) CONFIRMING THE ASSESSMENTS FOR THE 2024-25 FISCAL YEAR.

Frank Stafford, a resident, spoke in support and provided staff with a \$5,550 check that represents the amount of the budget deficit for Fiscal Year 2023-2024.

6:47 – Mayor Ashbeck directed City Clerk Parra to tabulate the ballots and adjourned the meeting to a recess.

7:03 – Mayor Ashbeck called the meeting to back to order and City Clerk Parra announced the results.

For the Blackhorse Estates Benefit Area 1 property owner protest, a total of 36 ballots were received with 2 incomplete ballots not counted. Of the 34 ballots counted, there were 32 ballots voting in support and 2 ballots voting in opposition. The preliminary results showed that the proposed increase did pass.

Motion for approval by Councilmember Pearce, seconded by Councilmember Basgall. Motion carried 4-0-1 with Councilmember Bessinger absent.

7:05 ITEM 11 - CONSIDER ITEMS ASSOCIATED WITH MODIFICATIONS TO THE EXISTING DENSITY RANGES FOR MULTIFAMILY HOUSING IN THE GENERAL PLAN AND DEVELOPMENT CODE. CITY OF CLOVIS, APPLICANT.

11A - CONSIDER APPROVAL – **RES. 24-75**, GPA 2024-002, A REQUEST TO AMEND THE GENERAL PLAN TO MODIFY THE DESCRIPTION MH (MEDIUM-HIGH DENSITY RESIDENTIAL) LAND USE DESIGNATION TO INCREASE THE MAXIMUM DENSITY FROM 15 TO 20 DWELLING UNITS PER ACRE AND TO MODIFY THE H (HIGH DENSITY RESIDENTIAL) LAND USE DESIGNATION TO INCREASE THE MINIMUM DENSITY FROM 15.1 TO 20.1 DWELLING UNITS PER ACRE.

Upon call, there was no public comment.

Motion for approval by Councilmember Basgall, seconded by Councilmember Pearce. Motion carried 4-0-1 with Councilmember Bessinger absent.

11B - CONSIDER INTRODUCTION – **ORD. 24-10**, OA 2024-001, A REQUEST TO AMEND THE DEVELOPMENT CODE MODIFY THE DESCRIPTION R-2 (MEDIUM-HIGH DENSITY RESIDENTIAL) ZONE DISTRICT TO INCREASE THE MAXIMUM DENSITY FROM 15 TO 20 DWELLING UNITS PER ACRE) AND TO MODIFY THE R-3 (MULTI-FAMILY RESIDENTIAL, HIGH DENSITY) ZONE DISTRICT TO INCREASE THE MINIMUM DENSITY FROM 15.1 TO 20.1 UNITS PER ACRE.

Motion for approval by Councilmember Basgall, seconded by Councilmember Pearce. Motion carried 4-0-1 with Councilmember Bessinger absent.

7:12 ITEM 12 - CONSIDER APPROVAL – **RES. 24-76**, APPROVING VARIOUS ACTIONS REQUIRED TO CONDUCT THE NOVEMBER 5, 2024, GENERAL MUNICIPAL ELECTION:

Upon call, there was no public comment.

Motion for approval by Councilmember Pearce, seconded by Councilmember Mouanoutoua. Motion carried 4-0-1 with Councilmember Bessinger absent.

12A - CALLING AND GIVING NOTICE OF THE NOVEMBER 5, 2024, GENERAL MUNICIPAL ELECTION FOR THE PURPOSE OF ELECTING TWO (2) MEMBERS OF THE CITY COUNCIL FOR THE TERMS OF FOUR (4) YEARS THROUGH NOVEMBER 2028; AND

Motion for approval by Councilmember Pearce, seconded by Councilmember Mouanoutoua. Motion carried 4-0-1 with Councilmember Bessinger absent.

12B - REQUESTING TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE STATEWIDE GENERAL ELECTION; AND AUTHORIZING THE FRESNO COUNTY ELECTIONS DIVISION TO CONDUCT THE NOVEMBER 5, 2024, ELECTION; AND

Motion for approval by Councilmember Pearce, seconded by Councilmember Mouanoutoua. Motion carried 4-0-1 with Councilmember Bessinger absent.

12C - ESTABLISHING CONDITIONS FOR THE FILING OF CANDIDATES' STATEMENTS.

Motion for approval by Councilmember Pearce, seconded by Councilmember Mouanoutoua. Motion carried 4-0-1 with Councilmember Bessinger absent.

**CITY MANAGER COMMENTS – 7:17**

There were no comments provided.

**COUNCIL COMMENTS – 7:18**

The Council requested an update on the General Plan Advisory Committee status to inform interested community members.

The Council addressed concerns about electric vehicles, golf carts, and motorized bicycles on trails.

**CLOSED SESSION – 7:24**

ITEM 13 - GOVERNMENT CODE SECTION 54956.9(D)(1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION CASE NAME: DESIREE MARTINEZ V. CITY OF CLOVIS, ET AL., CASE NO. F082914

**RECONVENE INTO OPEN SESSION AND REPORT FROM CLOSED SESSION – 7:35**

No action taken.

**ADJOURNMENT**

Mayor Ashbeck adjourned the meeting of the Council to July 1, 2024.

Meeting adjourned: 7:35 p.m.

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Mayor

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City Clerk





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 1, 2024

SUBJECT: Administration - Approval – Authorize the City Manager to enter into an agreement with the Jamison Family Community Property Trust for the lease of 1625 Shaw Ave., Suites 101 & 103, for approximately \$205,000 per year.

ATTACHMENTS: 1. Proposed Lease Agreement

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For the City Council to authorize the City Manager to enter into an agreement with Jamison Family Community Property Trust for the lease of 1625 Shaw Ave., Suites 101 & 103.

### **EXECUTIVE SUMMARY**

In June of 2023, City Council authorized a lease for 1625 Shaw, Suite 101 for the Information Technology Division. This initial term of the lease expires in June of 2025 with extensions available. The adjacent 3,370 square foot suite has become available and has been identified as an ideal space for the Personnel and Risk Management Division. Leasing this space would mean the City is the sole lessor of 1625 Shaw Ave for a total of 8,448 square feet. A very competitive lease has been negotiated for the entirety of the building for a five-year period with options for an extension for approximately \$205,000 per year plus common area charges. The base rent will increase approximately 2.5% per year over the five-year lease. Staff is recommending that Council authorize the City Manager to enter in the lease agreement for this office space.

### **BACKGROUND**

In June of 2023 City Council authorized a lease for 1625 Shaw, Suite 101 for the Information Technology Division, staff occupied the space in July of 2023. The current lease expires in June of 2025 with extensions available. The space has been ideal for the Information Technology

Division and has been a cost-effective means of providing high-quality and necessary office space. In addition the Information Technology Division staff have had a good experience in the leased space for the past year.

The adjacent 3,370 square foot suite has become available and has been identified as an ideal space for the Personnel and Risk Management Division. City Hall is beyond capacity at this time. The Personnel and Risk Management Division is an ideal fit for the space and would allow the Economic Development, Housing, and Communications team to move from the Administration office into the current Personnel and Risk Management office. This would also create several new meeting and/or break rooms and provide a small amount of extra room for future staff. Being adjacent to the Information Technology Division is also ideal as the City has infrastructure in place at the 1625 Shaw building as this leverages that infrastructure.

Leasing this space would mean the City is the sole lessor of 1625 Shaw Ave for a total of 8,448 square feet. A very competitive lease has been negotiated for the entirety of the building for a five-year period with options for an extension. Staff is recommending that Council authorize the City Manager to enter in the lease agreement for this office space.

The office location at 1625 Shaw Avenue, Suites 101 & 103, meets the City's needs. The initial lease agreement is for five years with five optional one-year renewals. That should provide sufficient time to develop a plan for a more suitable and permanent space for both Divisions here on the City Hall campus area. Staff is recommending that Council authorize the City Manager to enter into the lease agreement for the office space at 1625 Shaw Ave., Suites 101 & 103.

#### **FISCAL IMPACT**

The cost for leasing both suites for office space is \$205,000 per year plus an annual increase of 2.5% and common area charges starting on August 1, 2024. It is included in the FY24-25 budget.

#### **REASON FOR RECOMMENDATION**

The new leased building will provide the City an interim office space until a permanent facility becomes available on or near the City Hall campus area and address current space issues at City Hall.

#### **ACTIONS FOLLOWING APPROVAL**

The lease agreement with Jamison Family Community Property Trust will be executed and staff will begin moving on or after August 1, 2024.

Prepared by: Andrew Haussler, Assistant City Manager

Reviewed by: City Manager *AH*

**STANDARD MULTI-TENANT OFFICE LEASE - NET**

**1. Basic Provisions ("Basic Provisions").**

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only June 3, 2024, is made by and between Jamison Family Community Property Trust established by the Jamison Family Trust dated March 17, 2013, William O. Jamison and Cinda L. Jamison, husband and wife, as community property and Elizabeth Anne Cardoza, a married woman as her sole and separate property. ("Lessor") and City of Clovis, a California Municipal Corporation ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), commonly known as (street address, suite, city, state): 1625 Shaw Avenue, Suite 103, Clovis, CA 93612 ("Premises"). The Premises are located in the County of Fresno, and consist of approximately 3370 rentable square feet and approximately 3370 useable square feet. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 8448 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** 20 unreserved and N/A reserved vehicle parking spaces at a monthly cost of N/C per unreserved space and N/A per reserved space. (See Paragraph 2.6)

1.3 **Term:** Five (5) years and Zero (0) months ("Original Term") commencing August 1, 2024 ("Commencement Date") and ending July 31, 2029 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing upon lease execution ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$6,740.00 per month ("Base Rent"), payable on the First day of each month commencing August 1, 2024. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 **Lessee's Share of Operating Expenses.** 3370 rsf / 8448 total percent (39.89 %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

**1.7 Base Rent and Other Monies Paid Upon Execution:**

- (a) **Base Rent:** \$6,740.00 for the period August 1-31, 2024.
- (b) **Operating Expenses:** The current estimate for the period August 1-31, 2024 is \$1,853.00 (\$0.55 PSF).
- (c) **Security Deposit:** \$7,448.00 ("Security Deposit"). (See also Paragraph 5)
- (d) **Parking:** -0- for the period -0-.
- (e) **Other:** -0- for -0-.
- (f) **Total Due Upon Execution of this Lease:** \$16,401.00.

1.8 **Agreed Use:** Administration/marketing services and related office uses. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Colliers Tingey International, Inc. License No. 00452468 Is the broker of (check one):  the Lessor; or  both the Lessee and Lessor (dual agent).

Lessor's Agent Bobby Fena, SIOR License No. 00590204 is (check one):  the Lessor's Agent (salesperson or broker associate); or  both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Colliers Tingey International, Inc. License No. 00452468 Is the broker of (check one):  the Lessee; or  both the Lessee and Lessor (dual agent).

Lessee's Agent Bobby Fena, SIOR License No. 00590204 is (check one):  the Lessee's Agent (salesperson or broker associate); or  both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of per separate agreement ~~or~~ \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 1:00 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and shall have access to the Leased Premises 24 hours per day/7 day.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- Janitorial services
- Electricity
- Other (specify): gas, telephone or internet services, TV

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs 50 through 54;
- a plot plan depicting the Premises;
- a current set of the Rules and Regulations;
- a Work Letter;
- a janitorial schedule;
- other (specify): Exhibit A, B, C, D, E, Addendum A and Leased Addendums.

**2. Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

INITIALS

INITIALS

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises. **Lessor represents and warrants to Lessee that, on the Commencement Date, the Premises shall comply with all Applicable Requirements.**

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any **commercially reasonable** rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

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3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expenses) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Operating Expenses. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of all Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Operating Expenses" include all costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, including, but not limited to, the following:

(i) The operation, repair, and maintenance in neat, clean, safe, good order and condition, of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, lessees or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) The Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost to replace equipment or capital components such as the roof, foundations, or exterior walls, the cost to replace a Common Area capital improvement, such as the parking lot paving, elevators or fences, and/or the cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3. Provided however, that if such equipment or capital component has a useful life for accounting purposes of 5 years or more that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(b) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expenses. Within 60 days after the end of each calendar year-written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Operating Expenses for the preceding year. Lessee shall have the right, for a period of 60 days after Lessor delivers to Lessee the statement of Lessor's actual Operating Expenses for the previous calendar year to audit that portion of Lessor's Books and Records pertaining to the actual Operating Expenses for such preceding calendar year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. ~~Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in~~

INITIALS

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~~control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significant, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition.~~ Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

**6. Use.**

**6.1 Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

**6.2 Hazardous Substances.**

**(a) Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

**(b) Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

**(c) Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

**(d) Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

**(e) Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

**(f) Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

**(g) Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**6.3 Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee **with respect to Lessee's occupancy of the Premises (as opposed to Lessee's business operations)** or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times **(with 24 hours prior notice)**, after ~~reasonable~~ **24 hours prior** notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or

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testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extrinsically ascertain. ~~Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.~~

**7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

**7.1 Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, **windows/plate glass** and to repair or replace any improvements within the Premises.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the Premises, the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas.

**7.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed ~~\$2000.~~ **\$25,000 in any calendar year** Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. ~~For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.~~

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

**7.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

**8. Insurance; Indemnity.**

**8.1 Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (a)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

**8.3 Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. ~~Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor.~~ If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the

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Page 5 of 14

annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

**8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. ~~Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence.~~ The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. ~~Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.~~

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

**8.5 Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. ~~Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~ **Lessee shall, on or prior to the Start Date, deliver to Lessor certificates of insurance evidencing the required insurance. No such policy shall be canceled without endeavoring to provide ten (10) days prior written notice to Lessor. Lessee shall, within 5 days of the expiration of such insurance, furnish Lessor with an updated certification of insurance evidencing the renewal or replacement of the required insurance.**

**8.6 Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

**8.7 Indemnity.** ~~Except for Lessor's gross negligence or willful misconduct,~~ **Except for Lessor's negligence,** Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8. **Notwithstanding anything in this section to the contrary, however, the foregoing shall not limit, restrict, otherwise affect Lessor's obligations under the Lease.**

**8.9 Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

**9. Damage or Destruction.**

**9.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

**9.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as

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and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the Premises, replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

**10. Real Property Taxes.**

**10.1 Definitions.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

**10.2 Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

**10.3 Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

**10.4 Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

**10.5 Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

**11. Utilities and Services.**

**11.1 Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

**11.2 Services Exclusive to Lessee.** Notwithstanding the provision of paragraph 11.1, Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

**11.3 Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

**11.4 Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

**11.5 Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or

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discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable cooperation with governmental request or directions.

11.6 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

## 12. Assignment and Subletting.

### 12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, **which consent shall not be unreasonably withheld, delayed or conditioned.**

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of ~~25%~~ **50%** or more of the voting control of Lessee shall constitute a change in control for this purpose.

~~(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.~~

~~(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a non-curable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.~~

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

### 12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

## 13. Default; Breach; Remedies.

**13.1 Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any

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INITIALS

Last Edited: 6/25/2024 1:12 PM

Page 8 of 14

18

guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other document information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 BUSINESS days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) Notice of Breach. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) Performance by Lessee on Behalf of Lessor. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations

INITIALS

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made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 business days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 business day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain.

~~Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.~~

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 business days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding the Nature of a Real Estate Agency Relationship.

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(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

**26. No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being ~~150%~~ **115%** of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

**27. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**28. Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

**29. Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

**30. Subordination; Attornment; Non-Disturbance.**

**30.1 Subordination.** This Lease and any option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

**30.2 Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

**30.3 Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

**30.4 Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

**32. Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities,

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services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. Lessee waives any charges for damages or injuries or interference with Lessee's property or business in connection therewith.

**33. Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

**34. Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

**35. Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**36. Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

**37. Guarantor.**

**37.1 Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

**37.2 Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

**38. Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

**39. Options.** If Lessee is granted any Option, as defined below, then the following provisions shall apply.

**39.1 Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

**39.2 Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

**39.3 Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

**40. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

**41. Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any Lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on pole signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

~~(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out-of-pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.~~

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

**42. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

**43. Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is

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agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease  is  is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

- 1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
- 2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

As an independently owned and operated member of Colliers International, Colliers Tingey International, Inc. is solely responsible for any liability arising from this agreement.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Fresno, CA

On: \_\_\_\_\_

By LESSOR:

Jamison Family Community Property Trust established by the Jamison Family Trust dated March 17, 2013, William O. Jamison and Cinda L. Jamison, husband and wife, as community property and Elizabeth Anne Cardoza, a married woman as her sole and separate property.

By: \_\_\_\_\_

Name Printed: William O. Jamison

Title: Co-Trustee

Phone: 559-240-5586

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: Cinda L. Jamison

Title: Co-Trustee

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

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MTON-20.20, Revised 10-22-2020

Executed at: Clovis, CA

On: \_\_\_\_\_

By LESSEE:

City of Clovis, a California Municipal Corporation

By: \_\_\_\_\_

Name Printed: John Holt

Title: City Manager

Phone: 559-324-2340

Fax: \_\_\_\_\_

Email: johnh@ci.clovis.ca.us

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: 1033 Fifth Street, Clovis, CA 93612

Federal ID No.: \_\_\_\_\_

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Last Edited: 6/25/2024 1:12 PM

Email: \_\_\_\_\_

By \_\_\_\_\_

Name Printed: Elizabeth Anna Cardoza

Title: Owner

Phone: (559) 999-9510

Email: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

**BROKER**

Colliers Tingey International, Inc.

Attn: Bobby Fena, SIOR

Title: SVP | Principal

Address: 7485 N. Palm Avenue Suite 110, Fresno, CA 93711

Phone: 559-221-1271

Fax: 559-222-8744

Email: bobby.fena@colliers.com

Federal ID No.: \_\_\_\_\_

Broker DRE License #: 00452468

Agent DRE License #: 00590204

**BROKER**

Colliers Tingey International, Inc.

Attn: Bobby Fena, SIOR

Title: SVP | Principal

Address: 7485 N. Palm Avenue, Suite 110, Fresno, CA 93711

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Agent DRE License #: 00590204

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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP**

(As required by the Civil Code)

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

**SELLER'S AGENT**

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

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

To the Buyer and the Seller:

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

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**BUYER'S AGENT**

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

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

To the Buyer and the Seller:

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

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**AGENT REPRESENTING BOTH SELLER AND BUYER**

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

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

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

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

**SELLER AND BUYER RESPONSIBILITIES**

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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

Buyer    Seller    Lessor    Lessee   \_\_\_\_\_ Date: \_\_\_\_\_

Buyer    Seller    Lessor    Lessee   \_\_\_\_\_ Date: \_\_\_\_\_

Agent: Colliers Tingey International, Inc. DRE Lic. #: 00452468  
Real Estate Broker (Firm)

By: \_\_\_\_\_ DRE Lic. #: 00590204 Date: \_\_\_\_\_

(Salesperson or Broker-Associate) **Bobby Fena**

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

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

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

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

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

2079.16 Reproduced on Page 1 of this AD form.

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

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

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number

Is the broker of (check one): [ ] the seller; or [ ] both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number

Is (check one): [ ] the Seller's Agent. (salesperson or broker associate); or [ ] both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number

Is the broker of (check one): [ ] the buyer; or [ ] both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number

Is (check one): [ ] the Buyer's Agent. (salesperson or broker associate); or [ ] both the Buyer's Agent and the Seller's Agent. (dual agent)

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

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

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

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

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

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

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

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

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**EXHIBIT "A"**  
**SITE PLAN**



**EXHIBIT "B"**  
**FLOOR PLAN**  
1625 Shaw Avenue, Suite103  
Rentable sf – 3,370 sf



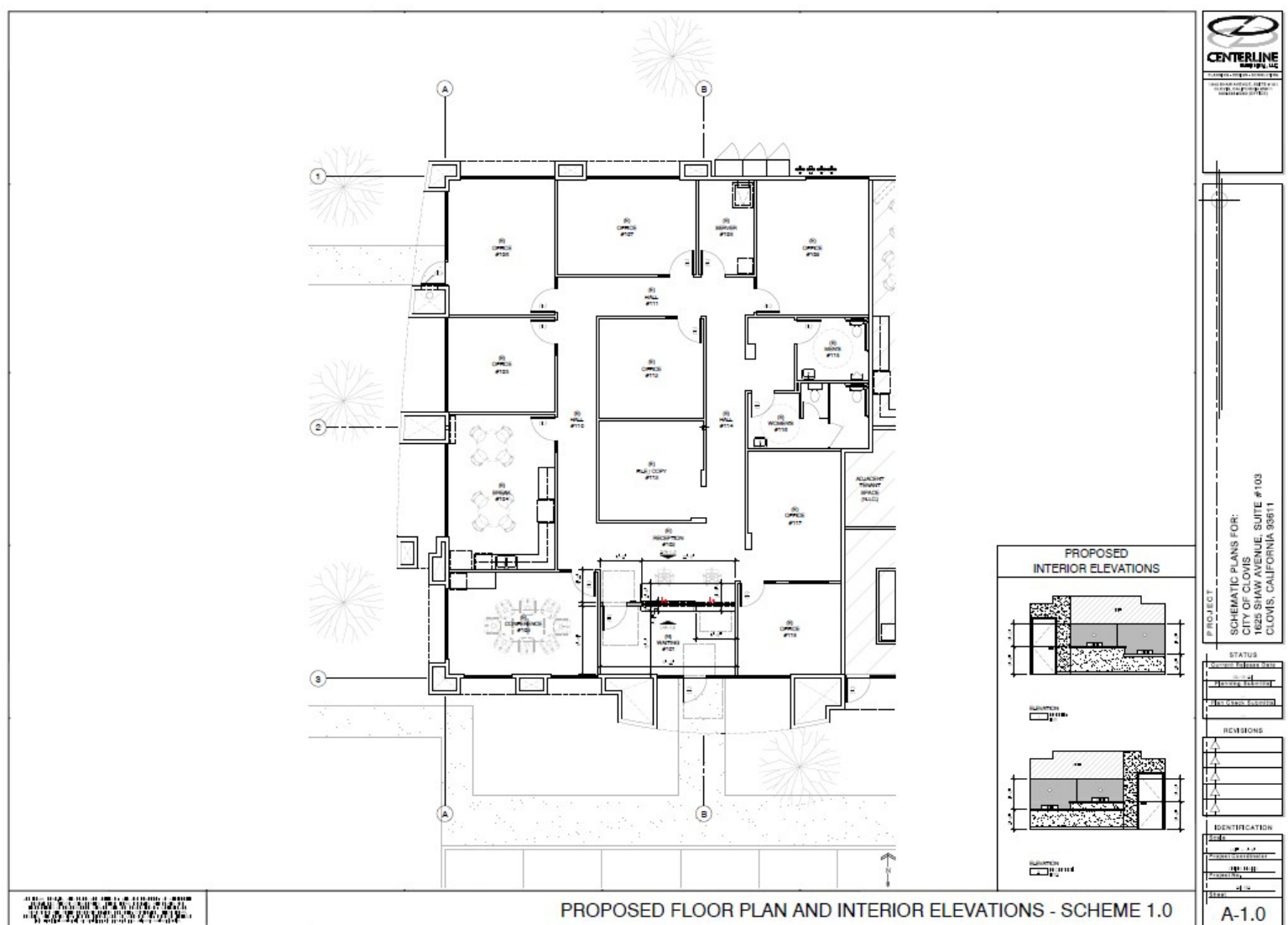
Lessor's Initials  
\_\_\_\_\_/\_\_\_\_\_

Lessee's Initials  
\_\_\_\_\_/\_\_\_\_\_

Broker's Initials  
\_\_\_\_\_/\_\_\_\_\_

Broker's Initials  
\_\_\_\_\_/\_\_\_\_\_

**EXHIBIT B-1**  
**Floor Plan**



**EXHIBIT "C"**  
**LESSOR WORK LETTER**

Rider to the AIR Commercial Real Estate Association Standard Multi-Tenant Office-Lease Net, dated June 3, 2024, (the "Lease"), between Jamison Family Community Property Trust ("Lessor"), and City of Clovis, a California Municipal Corporation ("Lessee").

THE INFORMATION CONTAINED IN THIS RIDER/EXHIBIT CONSTITUTES A PART OF THIS LEASE. IN THE EVENT ANY TERMS OF THE LEASE CONFLICT WITH THIS RIDER, THE TERMS OF THIS RIDER SHALL PREVAIL.

**RECITALS:**

Concurrently with the execution of this Work Letter, Lessor and Lessee have entered into a Lease (the "Lease") covering certain Leased Premises (the "Premises") more particularly described in the Lease. In consideration of the mutual covenants hereinafter contained, Lessor and Lessee hereby agree as follows:

Lessor will be responsible for all costs associated with delivery of the space in turnkey condition and at its expense shall complete the following:

1. **Entrance/Reception Area:** Remove existing desk and elevated pad and clean the ceramic floor tiles. Install a wall and entry door (at the west end of this new wall) in the reception area. Exact location of said wall and door to be mutually agreed to between the parties. See Exhibit B-1.
2. **Lighting:** Replace burnt out light bulbs throughout the suite where needed.
3. **Paint:** Repaint all painted walls in colors selected by Lessee.
4. **Floor Coverings:** Professionally clean all existing floor coverings throughout the suite.
5. **Ceiling Tiles:** Replace six (6) damaged/stained tiles.
6. **IT/Mechanical room:** Install a metal type "pan" underneath the existing water heater in that room to prevent leaks.
7. **Building Operating Systems:** Insure that all Building Operating Systems such as HVAC, lighting, electrical, ceiling, fire sprinklers & plumbing, and shall be in proper working order upon Lessee's occupancy within the Premises.
8. **Suite Cleaning:** The entire suite shall be professionally cleaned prior to Lessee's occupancy within the Premises.

**Agreed to and accepted by:**

**"LESSOR"**  
Jamison Family Community Property Trust

**"LESSEE"**  
City of Clovis, a California Municipal Corporation

By: \_\_\_\_\_  
William O. Jamison, Co-Trustee

By: \_\_\_\_\_  
John Holt  
City Manager

By: \_\_\_\_\_  
Cinda L. Jamison, Co-Trustee

By: \_\_\_\_\_  
Elizabeth Anne Cardoza

Executed \_\_\_\_\_

Executed: \_\_\_\_\_

**EXHIBIT "D"**  
**RULES AND REGULATIONS**

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside of the building without the written consent of Lessor first had and obtained and Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Lessee.

All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Lessee by a person approved of by Lessor.

Lessee shall not place anything or allow anything to be placed near the glass or any window, door, partition or wall which may appear unsightly from outside the Premises; provided, however, that Lessor may furnish and install a Building standard window covering at all exterior windows. Lessee shall not without prior written consent of Lessor cause or otherwise sunscreen any window.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the Lessees or used by them for any purpose other than for ingress and egress from their respective Premises.
3. Lessee shall not alter any lock or install any new or additional locks or any bolts on any doors or windows of the Premises without first obtaining Lessor's consent.
4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Lessee who, or whose employees or invitees shall have caused it.
5. Lessee shall not overload the floor of the Premises or in any way deface the Premises or any part thereof.
6. Lessee shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used In a manner offensive or objectionable to the Lessor or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises or the Building.
7. No major commercial cooking shall be done or permitted by any Lessee on the Premises, nor shall the Premises be used for the storage of merchandise, for washing clothes, for lodging, or for any improper, objectionable or immoral purposes. Microwave cooking is allowed.
8. Lessee shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Lessor.
9. Lessor will direct electricians as to where and how telephone, computer or fiber optic wiring is to be introduced. No boring or cutting for wires will be allowed without the consent of the Lessor.
10. Lessor reserves the right to exclude or expel from the Building any person who, in the judgment of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall, in any manner, do any act in violation of any of the rules and regulations of the Building.
11. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.
12. Lessee shall not disturb, solicit, or canvass any occupant of the building and shall cooperate to prevent same.
13. Without the written consent of Lessor, Lessee shall not use the name of the Building in connection with or in promoting or advertising the business of Lessee except as Lessee's address.
14. Lessor shall have the right to control and operate the public portions of the Building, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the Lessees, in such manner, as it deems best for the benefit of the Lessees generally.
15. All entrance doors in the Premises shall be left locked when the Premises are not in use, and all doors opening to public corridors shall be kept closed except for normal ingress and egress from the Premises.

**EXHIBIT “E”**

**COMMENCEMENT OF TERM NOTICE**

Re: Lease dated June 3, 2024 between Jamison Family Community Property Trust (Lessor) and City of Clovis, a California Municipal Corporation (Lessee) concerning 1625 Shaw Avenue, Suite 103, Clovis, CA 93612 (Address).

In accordance with the subject Lease, we wish to advise and/or confirm as follows:

1. That the Premises have been accepted herewith by the Lessee as being substantially complete in accordance with the subject Lease, and that there is no deficiency in construction.
2. That the Lessee has possession of the subject Premises and acknowledges that under the provisions of the subject Lease, the term of said Lease shall commence as of \_\_\_\_\_, 2024 for a term of sixty (60) months ending on \_\_\_\_\_, 2029.
3. That in accordance with the subject Lease, rental commenced to accrue on \_\_\_\_\_, 2024.
4. If the commencement date of the subject Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in said Lease.
5. Rent is due and payable in accordance with the subject Lease. Your rent checks should be payable to:

Northstar Management, Inc.  
 7108 N. Fresno Street, Suite 370  
 Fresno, CA 93720

**Agreed & Accepted:**

**“LESSOR”**  
 Jamison Family Community Property Trust

**“LESSEE”**  
 City of Clovis, a California Municipal Corporation

By: \_\_\_\_\_  
 William O. Jamison, Co-Trustee

By \_\_\_\_\_  
 John Holt, City Manager

By: \_\_\_\_\_  
 Cinda L. Jamison, Co-Trustee

Executed: \_\_\_\_\_

By: \_\_\_\_\_  
 Elizabeth Anne Cardoza

Executed \_\_\_\_\_



ADDENDUM "A"

NOTICE TO OWNERS, BUYERS AND BUYERS  
REGARDING HAZARDOUS WASTES OR  
SUBSTANCES  
AND UNDERGROUND STORAGE TANKS

Comprehensive federal and state laws and regulations have been enacted in the last few years in an effort to develop controls over the use, storage, handling, clean-up, removal and disposal of hazardous wastes or substances. Some of these laws and regulations, such as, for example, the so called "Superfund Act", provide for broad liability schemes wherein an owner, Buyer or other user of the property may be liable for clean-up costs and damages regardless of fault. Other laws and regulations set standards for the handling of asbestos or establish requirements for the use, modification, abandonment, or closing of underground storage tanks.

It is not practical or possible to list all such laws and regulations in this Notice. Therefore, owners, buyers and Buyers are urged to consult legal counsel to determine their respective rights and liabilities with respect to the issues described in this Notice as well as all other aspects of the proposed transaction. If hazardous wastes or substances have been, or are going to be used, stored, handled or disposed of on the property, or if the property has or may have underground storage tanks, it is essential that legal and technical advice be obtained to determine, among other things, what permits and approvals have been or may be required, if any, the estimated costs and expenses associated with the use, storage, handling, clean-up, removal or disposal of the hazardous wastes or substances and what contractual provisions and protections are necessary or desirable. It may also be important to obtain expert assistance for site Investigations and building Inspections. The past uses of the property may provide valuable information as to the likelihood of hazardous wastes or substances, or underground storage tanks being on the property.

Although Colliers Tingey International will disclose any knowledge it actually possesses with respect to the existence of hazardous wastes or substances, or underground storage tanks on the property, Colliers Tingey International has not made investigations or obtained reports regarding the subject matter of this Notice, except as may be described in a separate written document signed by Colliers Tingey International. Colliers Tingey International makes no representations regarding the existence or nonexistence of hazardous wastes or substances, or underground storage tanks on the property. You should contact a professional, such as a civil engineer, geologist, industrial hygienist or other persons with experience in these matters to advise you concerning the property.

The term hazardous wastes or substances" is used in this Notice in its very broadest sense and includes, but is not limited to, petroleum base products, paints and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property. This Notice is therefore meant to apply to any transaction involving any type of real property, whether improved or unimproved.

Notwithstanding any other provision of this Lease, Lessee shall be permitted to use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of Hazardous Materials in, on, under, around or above the Premises or Property in connection with the operation of a professional office.

LEASE ADDENDUMS

50. Rent Schedule:

Month 1-12:	\$6,740.00/mo., NNN (\$2.00 psf)	(August 1, 2024 to July 31, 2025)
Month 13-24:	\$6,909.00/mo., NNN (\$2.05 psf)	(August 1, 2025 to July 31, 2026)
Months 25-36:	\$7,077.00/mo., NNN (\$2.10 psf)	(August 1, 2026 to July 31, 2027)
Months 37-48:	\$7,245.00/mo., NNN (\$2.15 psf)	(August 1, 2027 to July 31, 2028)
Months 49-60:	\$7,448.00/mo., NNN (\$2.21 psf)	(August 1, 2028 to July 31, 2029)

51. Option to Extend:

Providing that Lessee is not in default of this Lease, Lessor shall provide Lessee with an Option to Extend the term of the lease for two (2) periods of five (5) years each for the total space then under lease by Tenant in the Building. If Lessee elects to exercise such Option(s) to Renew, then Lessee will provide Lessor with written notice at least six (6) months prior to the expiration of the initial Lease Term or First Option Period. The rental rate for extension option shall be renegotiated between the parties and mutually agreed upon, based on the current Fair Market Rental Rates for professional office space, in the Clovis area submarket, at that time.

52. Existing Furniture, Fixtures and Equipment (F.F.&E.):

Lessor shall allow Lessee the right to utilize all existing F.F.&E. that is situated within the Leased Premises (if any), at no charge. However, Lessee shall be responsible for the cost of all maintenance and repair, if necessary.

53. Signage:

In the event that Lessee elects to install signage (Building exterior and/or monument) on the Building, the installation shall be at Lessee’s sole cost and expense. All signage will be per the Project’s standard signage program and reasonably approved by Lessor.

54. HVAC Unit Replacement Agreement:

It is hereby understood and agreed between the parties that Lessee shall remain responsible for all on-going repair and regular servicing of the Building’s HVAC equipment during the lease term. However, should replacement of any HVAC unit become necessary during the lease term, then Lessor shall pay for the cost of replacing any unit at that time. If Lessor fails to pay for all HVAC replacement costs and Lessee does so in connection with any replaced HVAC unit, Lessee shall be entitled to offset the replacement costs paid against any lease payments due and owing to Lessor under the lease agreement. If Lessor pays the costs for replacement of any HVAC units on the premises during the term of the lease, such costs shall be divided by one hundred twenty (120) and Lessee then shall be responsible to make monthly replacement cost payments to Lessor for that replacement/installation cost over a one hundred twenty (120) month period or until the Lease ends and Lessee vacates, whichever occurs first. (Example - \$20,000 unit cost divided by 120 months equals \$166.67 per month that Lessee shall repay to Lessor.

If the lease term is not extended beyond July 31, 2029, and Lessee vacates the Leased Premises, then the monthly replacement costs payments shall cease on the date the lease agreement officially expires.

55. Suite 101 Lease Extension:

It is understood and agreed, between the parties, that Lessee already leases and occupies 5078 rentable square feet within the subject building, on a sublease agreement, until May 31, 2025. As of June 1, 2025, that Lease will be automatically extended to coincide with this Lease for Suite 103. All terms and conditions of this Lease will apply to Lessee for the entire building with these clarifications:

Months 1-12: (August 1, 2025 to July 31, 2026)	\$10,410.00 per month, NNN (\$2.05 PSF)
Months 13-24: (August 1, 2026 to July 31, 2027)	\$10,664.00 per month, NNN (\$2.10 PSF)
Months 25-36: (August 1, 2027 to July 31, 2028)	\$10,918.00 per month, NNN (\$2.15 PSF)
Months 37-48: (August 1, 2028 to July 31, 2029)	\$11,222.00 per month, NNN (\$2.21 PSF)

56. Rent Commencement:

The agreement described in Paragraph 54 – HVAC Unit Replacement, is based on the Premise that the rent for both suites 101 and 103 shall commence on August 1, 2024, whether the new interior wall/door to be installed in the reception/waiting area, is completed by then or not. However, all other items described in Exhibit “C” – Lessor Work Letter shall be completed prior to August 1, 2024.

Agreed & Accepted:

“LESSOR”  
Jamison Family Community Property Trust

“LESSEE”  
City of Clovis, a California Municipal Corporation

By: \_\_\_\_\_  
William O. Jamison, Co-Trustee

By \_\_\_\_\_  
John Holt, City Manager

By: \_\_\_\_\_  
Cinda L. Jamison, Co-Trustee

Executed: \_\_\_\_\_



By: \_\_\_\_\_  
Elizabeth Anne Cardoza

Executed \_\_\_\_\_

**COMMERCIAL REAL PROPERTY DISCLOSURES  
(COMMERCIAL LEASE)  
COLLIERS TINGEY INTERNATIONAL, INC.**

**Property Address:**     1625 Shaw Avenue, Clovis, CA

**SubLessee:**            City of Clovis, a California Municipal Corporation

**Broker:**                 Colliers International

The purpose of this document is to explain the limited scope of Colliers Tingey International, Inc.'s ("Colliers Tingey") duties and responsibilities to Lessee, as well as provide certain disclosures related to this commercial lease transaction:

**1.                            Scope of Duties.** Lessee hereby acknowledges and agrees that Colliers Tingey/SS: (i) does not decide what rent Lessee should pay or the rent Lessor should accept as rent for the Property; (ii) does not guarantee the condition of the Property; (iii) does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by the Lessor or any other third parties; (iv) does not have an obligation to conduct an inspection of the Property; (v) shall not be responsible for identifying defects on the Property; (vi) shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, advertisements, flyers or other promotional material; (vii) shall not be responsible for providing legal, tax or financial advice regarding any aspect of a transaction entered into by Lessee and the Lessor; and (viii) shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Lessee agrees to seek legal, tax, insurance, title, financial and other desired assistance from appropriate professionals.

**2.                            Lessee to Obtain Inspections.** Lessee is responsible to have the Property thoroughly inspected and is responsible to ask its experts what investigations and evaluations may be appropriate, as well as the risks of not performing any such investigations or evaluations.

**3.                            Earthquake Safety.** Earthquakes occur throughout California. Colliers Tingey/SS owes no duty to inspect for earthquake weaknesses, or geological or seismic hazards. Tenant acknowledges receipt of a copy of "*The Commercial Property Owner's Guide to Earthquake Safety.*" Colliers Tingey/SS is not required to provide Lessee with any information concerning earthquake safety or other related issues. Lessee should have its experts confirm whether the Property is in any earthquake zone and otherwise investigate and evaluate these matters.

**4.                            Flood Zones.** The Property may or may not be located in a flood zone. Whether or not the Property is located in a flood zone, properties can be subject to flooding and moisture problems, especially properties on a slope or in low-lying areas or in a dam inundation zone. Lessee should have its experts confirm whether the Property is in a flood zone and otherwise investigate and evaluate these matters.

**5.                            Hazardous Materials/Underground Storage Tanks.** The Property may have hazardous or undesirable metals (including lead-based paint), minerals (including asbestos), chemicals, hydrocarbons, petroleum-related compounds, or biological or radioactive/emissive items (including electrical and magnetic fields) in soils, water, building components, above or below-ground tanks/containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. Asbestos has been used in items such as fireproofing, heating/cooling systems, insulation, spray-on and tile acoustical materials, floor tiles and coverings, roofing, drywall and plaster. Lessee should have its experts investigate and evaluate these matters.

**6.                            Fires.** The Property may be located within a high fire risk hazard zone or wildland zone that the state does not have responsibility to provide fire protection services to and may contain substantial fire risks. Lessee should have its experts confirm the Property's fire risks and otherwise investigate and evaluate these matters.

**7.                            Mold.** Colliers Tingey/SS is not qualified to advise Lessee on the existence of any mold on or near the Property or the health and safety risks related to mold exposure. Lessee is encouraged to obtain the services of a qualified and experienced professional to conduct inspections and tests

regarding any and all mold issues which may affect the Property. Lessee hereby acknowledges and agrees that Colliers Tingey/SS is not responsible for any required remediation and/or any resulting damages related to mold.

**8. Zoning/Licenses/Permits.** Lessee is solely responsible to ascertain whether the Property is suitable for its intended use and to obtain any necessary permits or licenses related to the Property. Colliers Tingey/SS recommends that Lessee obtain written confirmation regarding the status of the Property from any and all appropriate zoning and licensing agencies. Lessee should have its experts review any and all zoning, licensing and permit issues.

**9. Americans with Disabilities Act (ADA).** The Americans With Disabilities Act and other federal, state and local requirements may require changes to the Property. Lessee should have its experts investigate and evaluate these matters.

**10. Mandatory Accessibility Disclosure for Commercial Leases.** Pursuant to California Civil Code Section 1938, each lease or rental agreement for commercial property executed on or after July 1, 2013 must state whether the property being leased or rented has undergone inspection by a Certified Access Specialist (CASp), and, if so, whether the property has or has not been determined to meet all applicable construction-related accessibility standards. Lessee should have its experts investigate and evaluate these matters.

**11. Taxes.** Sales, leases and other real estate transactions can have federal, state and local tax consequences. Lessee should have its experts investigate and evaluate these matters.

**12. Energy Use Disclosure for Commercial Leases.** Pursuant to the California Nonresidential Building Energy Use Disclosure Program (AB1103), owners of nonresidential buildings must obtain and disclose, prior to any lease or lease renewal of the entire building, the energy use data for the building for the prior twelve (12) months, together with information regarding the building’s operating characteristics and ENERGY STAR Performance Score. Disclosure is required to be made to the prospective or existing Lessee no later than twenty-four (24) hours prior to the execution of a lease or lease renewal. This disclosure is required for entire buildings with a total gross floor area of Ten Thousand (10,000) square feet or more until December 31, 2015. After that date, AB 1103 has been replaced and there is no statewide energy use disclosure requirement in 2016. This requirement does not apply to leases of less than the entire building. Lessee should have its experts investigate and evaluate these matters.

**13. Verify Third Party Information.** Any and all information regarding the Property supplied by Colliers Tingey/SS has been received from third party sources and has not been independently verified or analyzed by Colliers Tingey/SS. It is strongly recommended that Lessee and its experts verify and analyze all information regarding the Property, including any linear or area measurements and the availability of all utilities. All work should be inspected and evaluated by Lessee and Lessee’s experts. Colliers Tingey/SS and its brokers are not experts (nor can they determine if any expert is qualified) to provide advice on legal, tax, design, ADA, engineering, construction, soils, title, survey, fire/life safety, insurance, hazardous materials, or other matters. These areas require special education and, generally, special licenses not possessed by Colliers Tingey/SS. Lessee is responsible to consult with its experts regarding these matters. Further, any opinions or other comments which may be provided by Colliers Tingey/SS regarding the Property shall not be relied on by Lessee. Lessee is responsible for gathering and evaluating the information regarding the Property and making an appropriate investment decision. Lessee understands that there is risk associated with any investment decision.

**ACKNOWLEDGED AND AGREED TO:**

City of Clovis

Lessee: \_\_\_\_\_ Date: \_\_\_\_\_

**John Holt, City Manager**



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 1, 2024

SUBJECT: Administration - Approval – Waive Normal Purchasing Process and approve the purchase of replacement desktop computers and servers using competitively bid contracts with purchasing provisions for California State and Local government agencies.

ATTACHMENTS: 1. None

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For the City Council to waive the normal purchasing process and approve the purchase of desktop computers and servers through the use of competitively bid contracts with purchasing provisions for California State and Local government agencies.

### **EXECUTIVE SUMMARY**

Included in the 2024-2025 Budget are funds to purchase computers for all departments and servers for applications. The computers and servers are to provide upgrades and replacement of obsolete, worn-out equipment and to equip new employees with computers. The computers are allocated to the various departments based on need. Upgrades are necessary to improve the work performance of clerical and technical positions. A portion of the computers to be purchased are to replace units that have high failure and repair rates or are unable to run upgraded software. Staff is recommending purchasing the replacement computers using previously competitively bid contracts with purchasing provisions for California State and Local government agencies.

### **BACKGROUND**

The Information Services Division is requesting approval to purchase computers and servers through other competitively bid contracts by other agencies, such as the California Multiple Award Schedule (CMAS). With the proliferation of competitively bid contracts with “piggy-back”

provisions, the need to purchase in large quantities at one time is no longer necessary. These current contracts base their pricing on the ability of multiple State and Local government agencies to purchase equipment on an “as needed” basis, while still passing along quantity discounts. Other examples of these contracts are the Western States Contracting Alliance (WSCA) and the California Communities Purchasing Program (CCPP) sponsored by the League of California Cities.

When purchasing computers on an as needed basis, the City will be able to set up and install the computers more efficiently when staffing is available, eliminating the need to have a large storage area for the computers and risk of potential loss due to theft or disaster. By purchasing when the computer is required, the City can still take advantage of price reductions.

As in the past, the City will continue to use the same evaluation criteria for selecting equipment. This will include certification of the preloaded operating system and software, quality of components, software upgrade policy, price, compliance with the City’s standard specifications, product reliability, vendor reputation, and financial stability of the supplier and the computer manufacturer.

#### **FISCAL IMPACT**

There is \$350,000 budgeted to fund the purchase of replacement computers, servers, related software, licensing and peripherals.

#### **REASON FOR RECOMMENDATION**

The computers and servers are needed to increase the stability of the computing environment, increase productivity and to replace worn-out equipment. Purchasing through current contracts will allow the City the flexibility to install computers and servers on an as needed basis, purchase the most recent configurations offered by the manufacturers, and receive the latest price reductions offered.

#### **ACTIONS FOLLOWING APPROVAL**

The City will purchase the budgeted desktop computers and servers from current competitively bid contracts as they are required. As the units arrive, they will be set up and installed to the department users that were designated to receive new computers during the budget process.

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

Reviewed by: City Manager *AA*



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 1, 2024

SUBJECT: Administration - Approval - Authorize the renewal of the next generation antivirus software subscription from the Center for Internet Security (CIS) in the amount of \$72,105.00 per year for three years.

ATTACHMENTS: None

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For the Council authorize the City Manager to execute a three (3) year agreement with the Center for Internet Security for the Next-Gen Antivirus software subscription for \$216,315, payable at \$72,105 each year.

### **EXECUTIVE SUMMARY**

The cybersecurity landscape continues to evolve, and new threats and vulnerabilities are introduced every day. The city's current Next Generation Antivirus platform has proven very effective in keeping up with these challenges. The initial software subscription/agreement was for one year and it expires in August. To remain in compliance with the licensing, provide some cost certainty and reliability, it is recommended that the subscription be renewed for a three (3) year term.

### **BACKGROUND**

To keep up with today's cybersecurity challenges an updated, next-generation antivirus system is needed. These next-gen platforms, called Managed Endpoint Detection and Response (MDR) systems, provide more comprehensive security protection, they provide additional insight on vulnerabilities and detections, and they also use advanced algorithms and heuristics (instead of the traditional/static virus definition files) to detect both known and unknown (zero-day) malware. Additionally, in 2022 the City signed up for cybersecurity insurance and one of the requirements for maintaining our coverage was to implement an MDR system.

Over the last year the City has been using the product and services from the Center for Internet Security (CIS). CIS is a non-profit organization that was specifically set up to bring both public agencies (Federal/State/Local) and private companies together to better mitigate and prevent cyber threats. Their MDR system and security operations center work jointly with the Cybersecurity and Infrastructure Agency (CISA), an agency of the US Department of Homeland Security. Also, as part of the City's membership, additional services are available such as Cybersecurity Best Practices, Cyber Threats and Advisories, Incident Detection, Response, and Prevention, and Information Sharing.

The initial software subscription/agreement from CIS was for one year and it expires in August. To provide some consistency, reliability and cost certainty with the system, and to remain in compliance with the licensing terms, staff recommends renewing the subscription from CIS for a three-year term for a total amount of \$216,315 (payable annually at \$72,105 per year).

### **FISCAL IMPACT**

The cost of purchasing the upgraded licenses and maintenance is included in the I.T. Division budget for Fiscal Year 2024-2025.

### **REASON FOR RECOMMENDATION**

To meet today's cybersecurity challenges, address the requirements of the City's cybersecurity insurance program and to remain in compliance, we must renew our licensing agreement. The MDR system from CIS has proven very effective as a next generation antivirus platform and the subscription / agreement will provide some stability and cost certainty for the next three years.

### **ACTIONS FOLLOWING APPROVAL**

After Council approval, Staff will renew the MDR subscription agreement with the Center for Internet Security.

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

Reviewed by: City Manager *AV*





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 1, 2024

SUBJECT: Administration – Approval – Authorize the Mayor to enter into a non-binding agreement, adding Clovis to a list of regional partners seeking to attract companies and jobs associated with the semiconductor industry.

ATTACHMENTS: None

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For the City Council to authorize the Mayor to enter into a non-binding agreement, adding Clovis to a list of regional partners seeking to attract companies and jobs associated with the semiconductor industry.

### **EXECUTIVE SUMMARY**

A group of regional partners, which include the Economic Development Corporation, Fresno County (Fresno County EDC), have agreed to a strategic partnership with the goal of introducing high-tech businesses to the region, specifically those connected to the semiconductor industry.

If Council approves, City Staff and the Mayor would join with representatives from the region at Semicon West, taking place in San Francisco in early July, to formally sign-on to the regional effort. Semicon West is a conference where members of the global electronics supply chain gather to network and make deals.

### **BACKGROUND**

Staff has worked closely with Fresno County EDC to introduce high tech businesses, which are looking to relocate, to our area. This effort has resulted in conversations with businesses associated with the semiconductor industry. Instead of working independently, regional partners have agreed to work together on this effort.

**FISCAL IMPACT**

The City is not obligating itself to any specific amount of funding, but does agree to contribute to the costs associated with the Semicon West event, including booth space/materials, etc. There are funds in the 2024-2025 Economic Development budget available. Any additional contributions of funding would be up to the individual parties participating in the regional effort, and there are no additional financial commitments.

**REASON FOR RECOMMENDATION**

To support the regional economic development efforts to connect with businesses associated with the semiconductor industry supply chain looking to relocate to the Clovis/Fresno area.

**ACTIONS FOLLOWING APPROVAL**

City Staff will attend Semicon West and with members of the semiconductor industry. Efforts will be made to work together as a region to bring high-tech jobs to our area.

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

Reviewed by: City Manager *JA*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services

DATE: July 1, 2024

SUBJECT: General Services - Approval – Res. 24-\_\_\_\_, Approving a Side Letter Agreement with the Transit Employees Bargaining Unit (TEBU) to Include Part-Time/Extra-Help Bus Drivers and Part-Time/Extra-Help Van Drivers; and Authorizing the City Manager to Execute the Agreement.

ATTACHMENTS: 1. Resolution with Side Letter Agreement

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For the City Council to approve a resolution approving a side letter agreement with the Transit Employees Bargaining Unit to include part-time/extra-help bus drivers and part-time/extra-help van drivers and authorize the City Manager to execute the agreement.

### **EXECUTIVE SUMMARY**

A new state law allows bargaining units to include in their MOU part-time, extra-help, temporary, and contract employees and requires engaging in the meet and confer process. The side letter agreement allows TEBU to represent extra-help bus drivers and extra-help van drivers and defines those items in the MOU which apply to the new group of employees.

### **BACKGROUND**

Assembly Bill 1484, which became effective January 1, 2024, requires temporary, part-time, contract, and extra-help employees who have been hired to perform the same or similar type of work that is performed by permanent employees represented by a recognized employee organization, to be automatically included in the same bargaining unit as the permanent full-time employees. The law requires the City to promptly participate in collective bargaining to establish certain employment conditions for the newly added temporary, part-time, extra-help, and contract employees.

The Transit Employees Bargaining Unit (TEBU) has requested the inclusion of part-time/extra help Bus Drivers and part-time/extra-help Van Drivers. Following the request, City management met with TEBU representatives to discuss revisions to the current MOU in relation to adding part-time employees and to specify which items pertain to only part-time employees, only full-time employees, or both part-time and full-time. The attached side letter has been agreed upon by TEBU and City management. When the current MOU expires in June 2025, the changes in the side letter will be incorporated into the successor MOU.

In addition, AB1484 requires, upon hire, the City to provide part-time, extra-help, contract, or temporary workers with their job description, wage rates, eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions. The same information is provided to TEBU within 5 business days of hiring the new employee.

### **FISCAL IMPACT**

No impact.

### **REASON FOR RECOMMENDATION**

AB 1484 requires the City to meet and confer with bargaining units that want to include into their MOU, part-time, extra-help, temporary, and contract employees who do similar work as represented full-time employees. The side letter agreement complies with the regulation and defines which items apply to which employees.

### **ACTIONS FOLLOWING APPROVAL**

The side letter agreement will be signed by all parties and effective once fully executed.

Prepared by: Shonna Halterman, General Services Director

Reviewed by: City Manager *AH*

**RESOLUTION 24-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS  
APPROVING A SIDE LETTER AGREEMENT WITH  
TRANSIT EMPLOYEES BARGAINING UNIT (TEBU)**

**WHEREAS**, per Assembly Bill 1484, TEBU has requested to include in the Memorandum of Understanding, part-time, extra help, temporary, and contract employees who do the same or similar work as employees currently represented by TEBU; and

**WHEREAS**, TEBU has requested inclusion of Part-Time/Extra-Help Bus Driver and Part-Time/Extra-Help Van Driver into the bargaining unit; and

**WHEREAS**, side letter Attachment A clarifies revisions to the current MOU related to the new Part-Time/Extra-Help positions and distinguishes which portions of the current MOU relate to full-time employees, part-time employees, or both, while side letter Attachment B states the City will meet again in the next four months to further discuss section 1.C; and

**WHEREAS**, TEBU and City representatives met and conferred on the side letters and are in agreement.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Clovis approves the Side Letter Agreements with TEBU (Attachment A and Attachment B) and authorizes the City Manager to sign the agreements.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on July 1, 2024, by the following vote, to wit.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

DATED: July 1, 2024

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**SIDE LETTER OF AGREEMENT  
BETWEEN CITY OF CLOVIS  
AND  
TRANSIT EMPLOYEES BARGAINING UNIT**

The City of Clovis (City) and the Transit Employee’s Bargaining Unit/OE3 (TEBU/OE3), collectively referred to as “the Parties,” agree to the following Side Letter of Agreement (Side Letter) to the Parties’ Memorandum of Understanding (MOU) effective July 1, 2022, through June 30, 2025.

**RECITALS**

1. TEBU/OE3 has requested inclusion of the following part-time, extra-help, positions into the bargaining unit pursuant to Assembly Bill 1484, which became law on January 1, 2024:

- Part-time/Extra Help Bus Driver
- Part-time/Extra-Help Van Driver

2. The purpose of this Side Letter is to identify the sections and subsections of the MOU that will and will not apply to part-time/extra-help staff and specify revisions or addenda to the MOU necessitated by the inclusion of part-time/extra-help staff in the bargaining unit.

3. This Side Letter also specifies whether sections and subsections of the MOU apply to Full-Time Bus Drivers, Lead Bus Drivers, or Transit Dispatcher, hereby designated as FT, or to Part-Time/Extra-Help Bus Drivers or Van Drivers, hereby designated as PT. Sections and subsections of the MOU shall apply to both FT and PT employees if not otherwise specified in this Side Letter.

**TERMS AND CONDITIONS**

1. Recitals. The above recitals are true and correct.
2. Application of the MOU to Part-time/Extra Duty Staff, FT, and PT.

**Section 1. Unit Description.**

A. Recognition of Exclusive Representative:

The first sentence of this subsection shall be revised as follows: “representing full-time non-management, transit permanent and probationary employees, *and certain part-time/extra help employees listed in subsection B below...*”

B. Description of the Bargaining Unit.

The following language shall be added to this subsection:

The unit shall also consist of all part-time/extra-help and probationary employees (hereafter referred to as "PT") in the following classifications:

1. Bus Driver PT
2. Van Driver PT

C. Part-Time/Extra-Help Employment Status:

Extra help employees possess an at-will employment status as defined under Rule I.4 of the City's Personnel Rules, with the exception that once an extra help employee has satisfactorily completed 2,080 hours and at least one calendar year of work in the employee's designated position, the employee may request a limited administrative review of certain disciplinary actions, subject to the following conditions:

- 1) An employee's accrual of 2,080 hours must be in the same position. If an employee transfers or is transferred by his/her Appointing Authority or the City, to a different position, the employee's accrual of hours shall start over.
- 2) Once an employee reaches 2,080 satisfactory hours of work and at least one calendar year, he/she shall be entitled to receive notice of any intended 'for cause' disciplinary action for separation from employment, suspension, or demotion. Such notice shall advise the employee of the specific policies upon which the intended disciplinary action is based. Information provided to the employee will be confidential and will not be disclosed to the public unless required by the law.
- 3) Upon receiving notice of an intended disciplinary action, the employee may request a limited review of the intended action by the Appointing Authority.
- 4) Once the employee is notified of an intended disciplinary action, the employee will be relieved of duties and in a non-paid status.
- 5) A request for review must be made within three business days (Monday through Friday excluding city-recognized holidays) of the employee's receipt of the notice of intended action. Such requests shall be in writing and shall specify the reasons the employee contests the intended action. Any request that does not comply with these requirements or is submitted untimely may be rejected by the City.
- 6) Review of an employee's intended disciplinary action shall be scheduled as soon as possible, but no later than one (1) week after receipt of the employee's request for review (absent extraordinary circumstances). If the Appointing Authority is unavailable to conduct the review, the City may designate someone else to serve as the reviewer.
- 7) During the review, the employee shall have an opportunity to respond to the intended action and explain why he/she believes the action is improper. The employee may also provide information during the review to support his/her position; however, the employee shall not be entitled to any discovery or information requests as part of this process. No witness testimony shall be permitted during the review.

An employee may be represented by his/her union representative throughout the review process.

- 8) Following the review, the Appointing Authority or designee shall notify the employee in writing whether the intended disciplinary action will be implemented. The Appointing Authority's decision shall be final and binding and may not be appealed in any manner, nor shall it constitute an adjudicatory or quasi-judicial decision subject to writ of mandamus pursuant to Code of Civil Procedure section 1094.5.
- 9) Nothing in this section is intended to change the at-will status of extra help employees or confer on employees any due process rights beyond the limited rights specified herein.
- 10) This section shall not apply to layoffs or similar separations from employment based on lack of work or need for the employee's services.

### **Section 5. Dues Deduction**

The City agrees to deduct union dues as required by law. However, if an employee's paycheck does not have sufficient funds to cover union dues, no dues will be deducted and any uncollected dues will need to be recuperated by the union directly. Regular dues collection will commence when adequate employee payroll funds are again available. The union shall defend, indemnify, and hold harmless the City, and its officers, employees, agents, representatives ("City Representatives"), from and against any and all claims, losses, demands, expenses, judgments, and any other liabilities related to or arising out of the City's or City Representatives' direct or indirect involvement in the collection of dues. Such defense and indemnity obligations shall include, without limitation, claims under state or federal wage and hour law, including, but not limited to, the Fair Labor Standards Act, the California Labor Code, and the California Industrial Commission Wage Orders.

### **Section 6. Union Access**

This section shall be revised as follows:

#### Access to new hire employee personal information:

Personal information on new FT and PT hires will be distributed to the Union President within 30 days after date of hire as required by AB 119. Due to the sensitive nature of the information, the Union President will pick up the provided information and sign for it. Only one e-mail notification will be sent out to the Union President. The Union President will be responsible for picking up the personal information in the Personnel office.

Per AB 1484, which became law on January 1, 2024, upon hire, the City shall provide new PT employees with their job description, wage rates, and eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions. The same information provided to PT employees shall be provided to the Union President via email within five business days of hiring the PT employee.



## **Section 8. Wage Scale and Retirement Contributions**

### **B. Wage Adjustment**

This subsection shall be revised to indicate that subsections B.1. and B.2. only apply to FT employees. Also, subsection B.3. shall be revised to specify that for the 2024-2025 fiscal year, all FT and PT employees shall receive a 3.0% wage increase effective July 1, 2024. In addition, PT Van Drivers shall receive a, 8.0% equity adjustment for a total of 11% effective July 1, 2024.

### **C. Retirement**

Subsection C.3. shall be revised to specify that the current Employee Paid Member Contribution is 7.50%\*, the Employee Cost Share of City PERS Cost is 8.40%, and the total of the two is 15.90%.

### **D. Step Increases**

This subsection shall be revised as follows:

The City shall maintain its current five (5) step salary plan during the term of this MOU for FT employees. PT employees are eligible for merit-based step increases after a minimum of one-year and the completion of 2080 working hours since hire, or since their last step increase. Once an employee reaches Step 5 within their classification, they shall not receive further merit-based step increases.

### **E. Deferred Compensation**

This subsection shall only apply to FT employees.

## **Section 9. Health, Life, and Dental Insurance Compensation**

### **F. Health Premium Rebate**

This subsection shall only apply to FT employees.

A new subsection G. shall be added to Section 9. for PT employees:

**G. Health Insurance for PT Employees.** PT employees who average 30+ hours of work per week will be eligible for City health insurance after one year of employment. The one-year look-back period will be one year from the hire date for the first year of employment, then will move to the annual lookback period of November 1 through October 31 for every year thereafter. Only PT employees who average 30+ hours of work per week for the year lookback are eligible for City paid benefits. If a PT employee is determined to be eligible, benefits will be effective 60 days following the look-back period, and the benefits offered shall be for the employee only, no family or child coverage is included. Each year, Personnel will notify eligible PT employees who will then have 30 days to either sign-up for coverage, opt out of coverage, or opt to receive

a cash-in-lieu benefit of \$420 per month by submitting a Request for Health Insurance Waiver form and providing evidence of being covered on another health plan. A PT employee's eligibility status may change year-to-year depending on the number of hours worked during the look-back period.

A new section H. shall be added to Section 9 for both FT and PT employees:

H. Employees who have exhausted their FMLA/CFRA leave rights and are on an unpaid leave of absence, or do not have sufficient wages to cover their portion of their health insurance premium, are eligible to continue their health insurance coverage for a period of up to three (3) months by paying the health insurance premium directly to the Finance department. After the three (3) month period, employees must enroll in COBRA to continue health insurance coverage through the City.

Subsection G Supplemental Life Insurance shall become subsection I, and only shall only apply to FT employees.

Subsection H. State Disability Insurance, shall become subsection J.

## **Section 10. Holidays**

Subsections A. through D. shall only apply to FT employees.

Subsection E. shall be revised as follows:

Whenever a FT employee is required to work on a recognized holiday, the employee shall be paid at straight time, plus one and one-half times their rate of pay for every hour actually worked with a two (2) hour minimum. PT employees who work on a City-designated holiday as specified in section 10.A. shall be paid at one and one-half times their rate of pay for every hour actually worked with a two (2) hour minimum.

## **Section 11. Sick Leave**

Subsections A. through F. shall only apply to FT employees.

### **G. Sick Leave Cash Out at Retirement**

This subsection shall be replaced with following language:

1. FT Employees who retire from the City on the regular PERS service retirement benefit may elect to receive a lump sum cash-out of up to 25% of their accrued sick leave balance as calculated at the time of retirement. This benefit is not applicable to employees who leave City service under any other conditions, including employees who retire under PERS disability retirements. Appropriate federal/state tax withholding will be made at the time of cash-out.

2. FT employees wishing to participate in this benefit shall notify the Personnel/Risk Management Division of their intention within thirty (30) days of their retirement date by completing a Sick Leave Cash-Out Benefit form.
3. Unused sick leave hours for FT employees will be cashed-out as noted above. For both FT and PT employees, sick leave hours that remain after any eligible cash-out will be certified to PERS for the benefit known as "Credit for Unused Sick Leave."

A new subsection H. shall be added to Section 11:

#### H. PT Sick Leave

On January 1, 2024, and every January 1 thereafter, PT employees will receive a forty (40) hour lump sum allocation of sick leave. Newly hired PT employees will receive forty (40) hours upon hire, then will receive an annual allocation each January as stated above. The maximum cap is forty (40) hours with no roll-over into the next year. Sick leave hours may be used for the diagnosis, care, or treatment of an existing health condition or for preventative care for the employee or a covered family member (parent, child, spouse or registered domestic partner, parent-in-law, sibling, grandchild, grandparent, or designated person). Sick leave hours may be used for a reproductive loss per California law. Sick leave hours may also be used by an employee who is the victim of domestic violence, sexual assault, or stalking for the purposes of:

1. Seeking medical attention for injuries cause by domestic violence or sexual assault.
2. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault.
3. To obtain psychological counseling related to an experience of domestic violence or sexual assault.
4. To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation.

Employees may be required by their department management to furnish a doctor's certificate or other proof of illness consistent with state and federal law.

CalPERS retired annuitants are not eligible for paid sick leave.

Accrued paid sick leave cannot be cashed out upon separation from employment and has no cash value.

#### **Section 12. Family Illness Leave**

This article only applies to FT employees.

#### **Section 13. Vacation**

The language in Section 13 shall be replaced with the following:

A. Full-time employees in this unit shall earn vacation credit on the following basis:

Years of Service	Accrual
1 through end of year 7	5 hours posted on each pay period to a maximum of 280 hours
8 through end of year 14	6 hours posted on each pay period to a maximum of 328 hours
15 through end of year 19	6.667 hours posted each pay period to a maximum of 360 hours
20 Years or more	8 hours posted on each pay period to a maximum of 360 hours

The time at which the employee shall be granted a vacation is at the discretion of the Department Head. Employee seniority, as defined in Section 26, shall govern selection of vacation time unless the needs of the City require a deviation from this procedure.

B. Part-Time/Extra Help employees who work an average of 20 hours or more per week for at least 5 consecutive years shall accrue Paid Time Off at the rate of 1.67 hours per pay period. If a part-time/extra-help employee works less than an average of 20 hours per week over a period of three consecutive months, they shall cease to accrue Paid Time Off. However, Paid Time Off accrual shall resume if the part-time/extra-help employee works more than 20 hours per week on average in a subsequent three consecutive months. Upon separation from City employment, the City shall pay part-time/extra-help employees the balance of their accrued Paid Time Off at their current hourly rate of pay.

**Section 14. Overtime**

Subsections A. through G. shall only apply to FT employees.

A new subsection H. shall be added to Section 14:

PT employees shall be paid overtime at the rate of one and one-half times their normal rate of pay for all hours actually worked in excess of 40 hours in a work week.

**Section 15. Specialty Pay**

This section shall only apply to FT employees.

**Section 16. Standby Pay**

This section shall only apply to FT employees.

**Section 17. Safety Incentive Program**

This section shall only apply to FT employees.

**Section 18. Compensatory Time-Off**

This section shall only apply to FT employees.

**Section 19. Bereavement Leave**

The language in Section 19 shall be replaced with the following:

Per California law, employees who have worked for the City at least 30 days will have five days unpaid bereavement leave based on their regular schedule. Employees working a variable part-time schedule are entitled to a total of five days of leave based on when they would normally be scheduled to work. The five unpaid days do not need to be consecutive, but they must be taken within three months of the death of a covered family member. FT employees receive 40 hours bereavement pay per year. Documentation verifying the family member's death may be required.

See the chart below for qualifying family member definitions.

	<p><b>Covered family members for 5 days unpaid bereavement. (5 days per qualifying family member death.) FT employees may use up to 40 hours bereavement pay per year.</b></p>	<p><b>Qualifying family members for 40 hours bereavement pay. (40 hours per year total.) The 40 hours is used concurrently with the 5 days unpaid time, not in addition to it. Example: A FT employee who works 4/10's would be entitled to 5 days leave. Four days (40 hours) would be paid bereavement, one day is unpaid or employee could use vacation or comp.</b></p>
<p>Full-time employee</p>	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Child</li> <li>• Parent</li> <li>• Sibling</li> <li>• Grandparent</li> <li>• Grandchild</li> <li>• Domestic partner</li> <li>• Parent-in-law</li> </ul>	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Child/Step</li> <li>• Parent/Step</li> <li>• Sibling/Step</li> <li>• Grandparent</li> <li>• Grandchild</li> <li>• Domestic partner</li> <li>• Legal Dependents</li> <li>• Parent-in-law</li> <li>• Sibling-in-law</li> <li>• Child-in-law</li> </ul>
<p>Part-time employee</p>	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Child</li> <li>• Parent</li> <li>• Sibling</li> <li>• Grandparent</li> <li>• Grandchild</li> <li>• Domestic partner</li> <li>• Parent-in-law</li> </ul>	<p>N/A</p>

**Section 20. Donation of Leave Time**

This section shall only apply to FT employees.

**Section 21. Leave of Absence Without Pay**

This section shall only apply to FT employees.

**Section 22. Minimum Callback Pay**

This section shall only apply to FT employees.

**Section 24. Jury Duty**

This section shall only apply to FT employees.

**Section 26. Layoffs**

Employees to be laid off in reverse seniority order get rehired in the same similar order as the full-timers.

**Section 28. Uniform Allowance**

Van Drivers will be added to this section.

**Section 29. Military Leave**

Subsection B. shall be replaced with the following:

FT employees called to active duty shall be paid their regular salary, and PT employees called to active duty shall be paid based on their regularly scheduled hours, for the first 30 days of active duty within a fiscal year. For PT employees who work a variable schedule, regularly scheduled hours shall be the average number of hours worked weekly over the prior six-month period, or the average number of weekly hours worked since employment if employed less than six months. Starting on the 31<sup>st</sup> day of active duty, employees will receive the difference between their military base pay and their City of Clovis pay. Military orders and wage statements will be required. See the Leave Guide for more details.

**Section 30. Professional Development**

This section shall only apply to FT employees.

**Section 31. Workweek**

The language in Section 31 shall be replaced with the following:

- A. The workweek for all unit members shall be 168 consecutive regularly recurring hours.
- B. For all PT employees, and for FT employees assigned to a “5 / 8” or “4 / 10” work schedule, the workweek shall begin at 0700 hours on Sunday and end at 0700 hours the following Sunday.
- C. For FT employees assigned to a “9/80” work schedule, each employee’s designated FLSA workweek (i.e., 168 regularly recurring hours) shall begin exactly four (4) hours after the start

time of the employee's eight (8) hour shift on the weekday that corresponds with the employee's regular alternating day off.

**Section 32. Flexible Work Schedules**

This section shall only apply to FT employees.

- 3. Inclusion of Side Letter in TEBU MOU. The additions and changes to the MOU that are described in Section 2. of this Side Letter shall be incorporated into the Parties' MOU during the Parties' next successor MOU negotiations.
- 4. Effective Date and Term of Side Letter. This Side Letter shall become effective upon ratification by the City Council and shall remain in effect through June 30, 2025.
- 5. Amendments. This Side Letter may only be amended in a writing signed by the Parties.
- 6. Attachments. The following documents are attached and hereby incorporated into the Side Letter:
  - 1. TEBU FT Salary Schedule.
  - 2. TEBU PT Represented Salary Schedule.

DATE SIGNED: \_\_\_\_\_

**For the City:**

**For TEBU:**

\_\_\_\_\_  
John Holt, City Manager

\_\_\_\_\_  
Adam De La Torre, TEBU Representative

\_\_\_\_\_  
Shonna Halterman, General Services Dir.

\_\_\_\_\_  
Heather Teer, TEBU Representative

\_\_\_\_\_  
Amy Hance, Deputy General Services Dir.

\_\_\_\_\_  
Allen Dunbar, OE3 Representative

\_\_\_\_\_  
Lori Shively, Deputy General Services Dir.

Attest: \_\_\_\_\_  
Briana Parra, City Clerk

Date: \_\_\_\_\_



**ATTACHMENT 1**  
**Applies to FT Employees**

**CITY OF CLOVIS**  
**TEBU - Monthly Salary Schedule - Effective July 1, 2023**

3% Wage Increase

Code	Position	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
5201	Bus Driver	150	4,290	4,505	4,730	4,967	5,215
5661	Lead Bus Driver	190	5,149	5,406	5,676	5,960	6,258
5986	Transit Dispatcher	250	4,712	4,948	5,195	5,455	5,728

**CITY OF CLOVIS**  
**TEBU - Hourly Salary Schedule - Effective July 1, 2023**

3% Wage Increase

Code	Position	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
5201	Bus Driver	150	24.75	25.99	27.29	28.66	30.09
5661	Lead Bus Driver	190	29.71	31.19	32.75	34.38	36.10
5986	Transit Dispatcher	250	27.18	28.55	29.97	31.47	33.05

**CITY OF CLOVIS**  
**TEBU - Monthly Salary Schedule - Effective July 1, 2024**

3% Wage Increase

Code	Position	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
5201	Bus Driver	150	4,419	4,640	4,872	5,116	5,372
5661	Lead Bus Driver	190	5,303	5,568	5,846	6,138	6,445
5986	Transit Dispatcher	250	4,853	5,096	5,351	5,619	5,900

**CITY OF CLOVIS**  
**TEBU - Hourly Salary Schedule - Effective July 1, 2024**

3% Wage Increase

Code	Position	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
5201	Bus Driver	150	25.49	26.77	28.11	29.52	30.99
5661	Lead Bus Driver	190	30.59	32.12	33.73	35.41	37.18
5986	Transit Dispatcher	250	28.00	29.40	30.87	32.42	34.04

**ATTACHMENT 2**  
PT Bus Driver and Van Driver Salary Matrix

**TEBU Part-Time/Extra Help Hourly Salary Schedule - Current**

**Current Wages**

<b>Code</b>	<b>Position</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
3460	Van Driver - Part-Time/Extra Help	\$17.60	\$18.48	\$19.40	\$20.37	\$21.39
3450	Bus Driver - Part-Time/Extra Help	\$24.75	\$25.99	\$27.29	\$28.66	\$30.09

**TEBU Part-Time/Extra Help Hourly Salary Schedule - Effective July 1, 2024**

**3% Wage Increase Plus 8% Equity Adjustment for Van Drivers**

<b>Code</b>	<b>Position</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
3460	Van Driver - Part-Time/Extra Help	\$19.54	\$20.52	\$21.54	\$22.62	\$23.75
3450	Bus Driver - Part-Time/Extra Help	\$25.49	\$26.77	\$28.11	\$29.52	\$30.99

**SIDE LETTER OF AGREEMENT  
BETWEEN CITY OF CLOVIS  
AND  
TRANSIT EMPLOYEE'S BARGAINING UNIT/OE3**

The City agrees to hold a meeting with TEBU to meet and discuss Section 1.C. of the MOU related to Part-Time/Extra-Help Employment Status. The City will schedule the initial meeting no later than October 31, 2024.

**For the City:**

**For TEBU:**

\_\_\_\_\_  
John Holt, City Manager

\_\_\_\_\_  
Adam De La Torre, TEBU Representative

\_\_\_\_\_  
Shonna Halterman, General Services Dir.

\_\_\_\_\_  
Heather Teer, TEBU Representative

\_\_\_\_\_  
Amy Hance, Deputy General Services Dir.

\_\_\_\_\_  
Allen Dunbar, OE3 Representative

\_\_\_\_\_  
Lori Shively, Deputy General Services Dir.

Attest: \_\_\_\_\_  
Briana Parra, City Clerk

Date: \_\_\_\_\_



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: July 1, 2024

SUBJECT: General Services – Approval - Reallocation of Capital Improvement Program Funds for Senior Center Tenant Improvements.

ATTACHMENTS: None

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For City Council to approve the reallocation of Community Investment Program (CIP) funds to be used for the Clovis Senior Center tenant space improvements for the purpose of expanding usable senior center space.

### **EXECUTIVE SUMMARY**

Within seven months of opening, the new senior center is already at capacity, has added over 2,300 new members, and is providing services to approximately 600 seniors daily. A recent generous gift of \$501,000 from the Carl and Lulu Mitchell Family Foundation has provided us with the opportunity to build out the additional 4,000 square feet of shell tenant space within the senior center, thereby providing additional programming space for the senior center. Council previously approved \$1,500,000 in General Government Funds to the space for the purpose of City office space, however staff is requesting shifting those funds to allow the space to be used for senior center programming. Offsite office space will be leased to provide the needed additional office space.

### **BACKGROUND**

On November 6, 2023, City Council approved expenditures in the amount of \$1,500,000 to complete tenant improvements on the 4,000 square feet of incomplete space within the Clovis Senior Activity Center at Landmark Square. At that time, the plan was to build-out the shell tenant space to house the Personnel division, thereby solving overcrowding issues at City Hall. Recently, however, 3,370 square feet of commercial office space located at 1625 Shaw Avenue

has become available in the same building as the City's Information Technology Division (IT). Moving Personnel into the space adjacent to IT provides an excellent opportunity to negotiate a five-year lease for both office suites and allows for other uses for the 4,000 square feet of space within the senior center.

The newly constructed senior center has already reached capacity since opening in November 2023. By shifting Personnel to the Shaw Avenue space, the previously allocated tenant improvement funds can be utilized to expand senior center operations into the 4,000 square feet former tenant space. A recent generous gift of \$501,000 from the Carl and Lulu Mitchell Family Foundation provides for funding to expand the usable senior center space while freeing funds for furniture and improvements at the Shaw Avenue location for Personnel, and cosmetic improvements at City Hall at the former Personnel space which will be repurposed for the Community Development, Housing and Communication Department.

When the senior center was designed, two kitchen storage areas and the custodian's office were engineered to become a hallway into the additional space, with the storage and office space shifted into the newly annexed space. The additional 4,000 square feet will allow for a large room with a dividing wall, two restrooms, a lobby area with tables and chairs for cards or socializing, and storage space. This will allow for additional programming space within the busy center to further meet the needs of area senior citizens. Signage acknowledging the generous gift of the Mitchell Family Foundation will be located on the exterior door of the new space, and within the interior.

#### **FISCAL IMPACT**

The Community Investment Program budget has already been allocated \$1,500,000 of general government services funding for the purpose of tenant improvements within the senior center. The recent \$501,000 gift allows for the ability to expand senior center operations into the former tenant space while allowing flexibility with general government services funds to prepare and furnish the new Personnel offices, and the Community Development, Housing and Communication Department space at City Hall (old Personnel offices).

#### **REASON FOR RECOMMENDATION**

Shifting the purpose of the 4,000 square feet vacant space within the senior center from City offices to senior center programming space provides additional opportunities to provide services to area seniors and the community as a whole.

#### **ACTIONS FOLLOWING APPROVAL**

An architect will be selected and planning for the new space will begin. The project is expected to be completed in 18-24 months.

Prepared by: Shonna Halterman, General Services Director

Reviewed by: City Manager *SH*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: July 1, 2024

SUBJECT: General Services – Approval - Claim Rejection of the General Liability Claim on behalf of Natilidawn Gonzales.

ATTACHMENTS: None

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

Reject the General Liability Claim filed on behalf of Natilidawn Gonzales.

### **EXECUTIVE SUMMARY**

On behalf of Natilidawn Gonzales (claimant), the City received a claim form on June 24, 2024, alleging the City of Clovis failed to train and supervise employees, and failed to provide a safe environment for students. It is recommended that the City reject the claim, send notice of rejection, and refer the matter to the City's third-party administrator for liability claims for further investigation and handling.

### **BACKGROUND**

On June 24, 2024, a revised General Liability Claim was received by the City of Clovis on behalf of Natilidawn Gonzales, by Downtown LA Law Group located in Los Angeles, CA. The claim was considered legally sufficient and timely. The claim alleges the City of Clovis failed to properly train and supervise their employees, failed to provide a safe and secure environment for students, and failed to properly and accurately inform Ms. Gonzales' mother of a situation that occurred on the property of Clovis High School, 1055 Fowler Avenue, Clovis, CA.

The claimant seeks damages for pain and suffering and bodily injury. The claim has been filed as a "civil unlimited case".

**FISCAL IMPACT**

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

**REASON FOR RECOMMENDATION**

The incident occurred outside of the City's jurisdiction, and the City has no involvement in this matter. It is recommended that the claim be rejected. The City's liability is disputed, and although the claim is legally sufficient, the amount of the alleged damages sustained by the claimant may also be disputed. Rejecting the claim and sending notice of rejection in accordance with the Government Claims Act will commence the time in which the claimant may file a lawsuit against the City based on the claim.

**ACTIONS FOLLOWING APPROVAL**

A rejection notice letter will be sent to the claimant informing her that the claim has been rejected.

Prepared by: Charles W. Johnson, Management Analyst

Reviewed by: City Manager *AH*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: July 1, 2024

SUBJECT: Planning and Development Services – Approval – Final Acceptance for CIP 24-03 ADA Curb Return Ramps 2024 – T2.

ATTACHMENTS: 1. Vicinity Map

### **CONFLICT OF INTEREST**

Councilmember Bessinger owns real property within 1,000 feet of the subject property and, pursuant to law, must abstain from participation and decision regarding this item.

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

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

### **EXECUTIVE SUMMARY**

The project included reconstruction of concrete curb ramps, curbs, gutters, valley gutters, and sidewalks at various locations within the City boundary.

### **BACKGROUND**

Bids were received on February 20, 2024, and the project was awarded by the City Council to the lowest responsible bidder, Kroeker, Inc., on March 11, 2024. The project was completed in accordance with the construction documents and the contractor has submitted a request for acceptance of the project.



**FISCAL IMPACT**

1.	Award	\$269,716.00
2.	Cost increases/decreases resulting from differences between estimated quantities used for award and actual quantities installed.	-\$9,549.60
3.	Contract Change Orders	
<b>Final Contract Cost</b>		<u><u>\$260,166.40</u></u>

The contract change order involved expansion of the scope of work at multiple locations needed to properly meet ADA requirements.


**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, Kroeker, Inc., has requested final acceptance from the City Council.

**ACTIONS FOLLOWING APPROVAL**

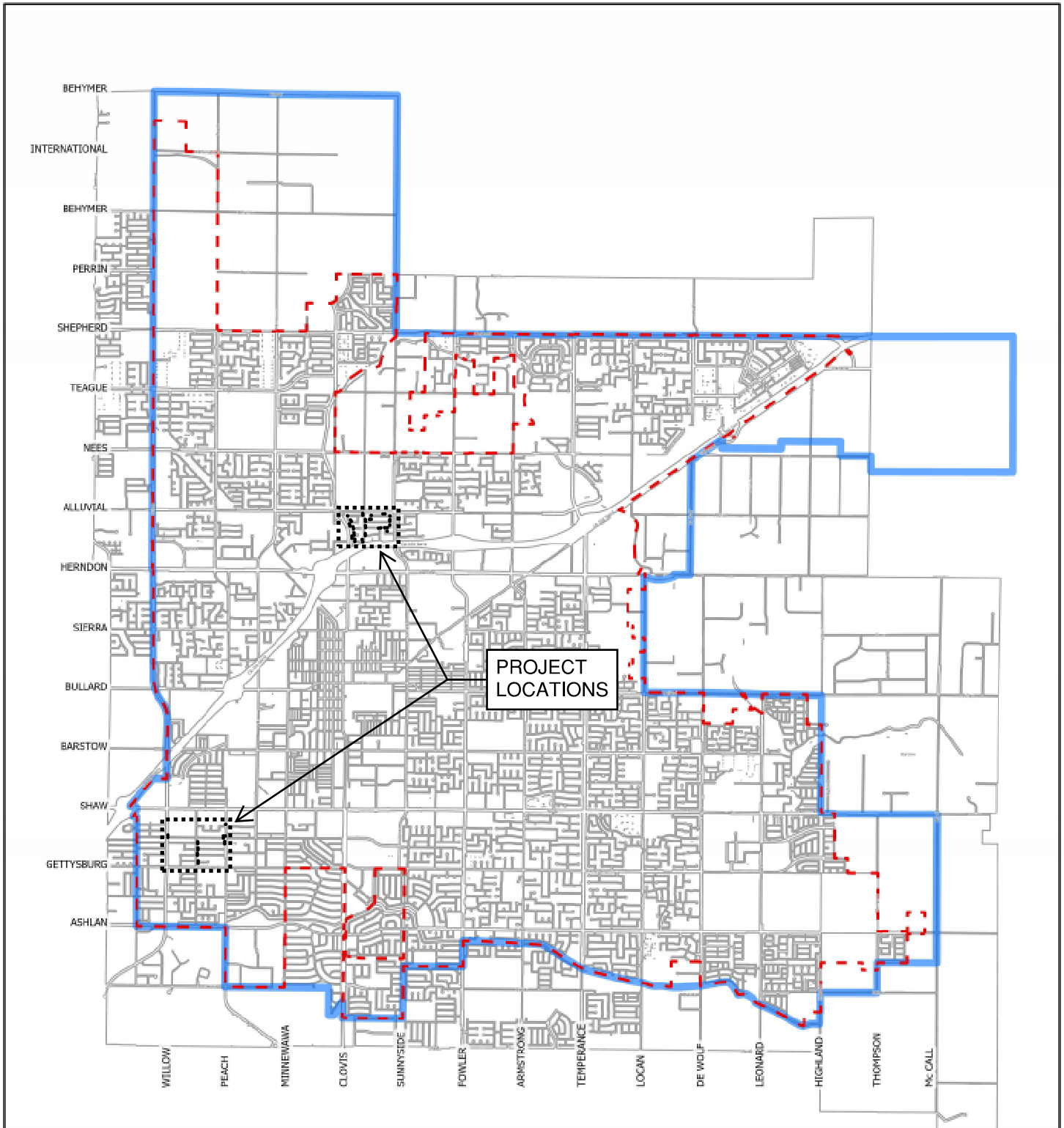
1. The Notice of Completion will be recorded; and
2. All retention funds will be released no later than 35 calendar days following recordation of the notice of completion, provided no liens have been filed. Retention funds may be released within 60 days after the date of completion, provided no liens 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: Rami Abunamous, Engineering Inspector

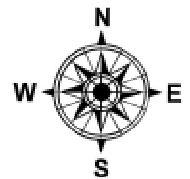
Reviewed by: City Manager 

# Vicinity Map

CIP 24-03 ADA Curb Return Ramps 2024 - T2



 CITY LIMITS  SPHERE OF INFLUENCE





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: July 1, 2024

SUBJECT: Planning and Development Services – Approval – Final Acceptance for Tract 6245, located at the northeast corner of Ashlan and Locan Avenues (Wilson Premier Homes).

ATTACHMENTS: 1. Vicinity Map

### **CONFLICT OF INTEREST**

Councilmember Mouanoutoua owns real property within 1,000 feet of the subject property.

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

1. Accept the public improvements for Tract 6245; 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 Completion, provided no liens have been filed; and release of Public Improvements Maintenance Surety upon the expiration of the one-year warranty period, and provided any defective work has been repaired to the City's satisfaction.

### **EXECUTIVE SUMMARY**

The owner, Wilson Premier Homes, has requested final acceptance of the public improvements constructed or installed in conjunction with this tract. The public improvements include all those shown on the subdivision improvement plans approved by the City Engineer.

The construction or installation of the public improvements is complete. The owner has requested final acceptance. Staff is recommending approval of their request.

**FISCAL IMPACT**

The costs for periodic routine maintenance, as well as repairs needed as the improvements deteriorate 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**

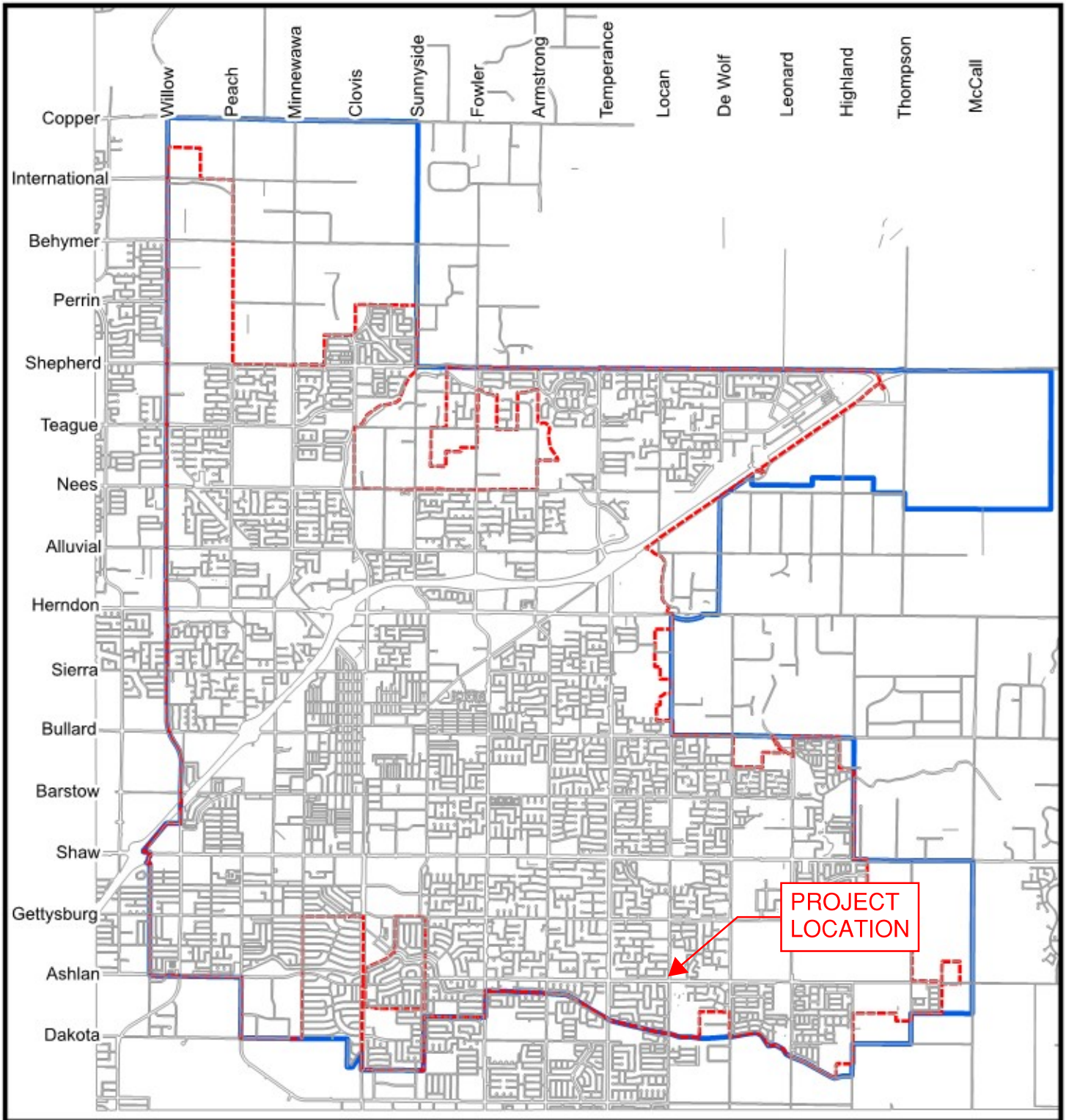
Record the Notice of Completion and release the Performance, Labor and Materials, and Maintenance Sureties as appropriate.

Prepared by: Ruben Amavizca, Engineer II

Reviewed by: City Manager *AM*

# VICINITY MAP

TM 6245



## ATTACHMENT 1

 CITY LIMITS  SPHERE OF INFLUENCE





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: July 1, 2024

SUBJECT: Public Utilities – Approval – Waive Formal Bidding Procedures and Authorize the City Manager to Execute a Contract with HF&H Consultants, LLC to Assist in the Preparation and Evaluation of a Request for Proposals for Recycling and Organics Collection Services for the Base amount of \$59,980.

ATTACHMENTS: 1. Consultant Service Agreement - HF&H

### **CONFLICT OF INTEREST**

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### **RECOMMENDATION**

For the City Council to waive formal bidding procedures and authorize the City Manager to execute a contract with Hilton Farnkopf & Hobson, LLC (HF&H) to assist in the preparation and evaluation of a Request for Proposals for Recycling and Organics Collection Services for the base amount of \$59,980.

### **EXECUTIVE SUMMARY**

The current collection contract with Republic Services is set to expire in August 2025. Prior to this date, the City needs to issue a Request for Proposals (RFP) for single-family, multifamily, and commercial recycling and organics collection services and select a provider from the respondents. To give potential proposers adequate time to procure equipment, staff is recommending beginning the RFP process at this early stage with HF&H. Staff is recommending that City Council authorize the City Manager to execute a Consultant Services Agreement with HF&H Consultants, LLC. HF&H has provided consultant services for over 30 years and assisted City staff in 1997, 2005, and 2015 with procuring waste collection contracts. The base contract amount is \$59,980; however, staff anticipates costs for additional contingencies with the consultant during and after contract service negotiations and award. Staff does not expect additional charges to exceed \$20,000.

**BACKGROUND**

HF&H has broad industry knowledge, over 30 years of procurement experience with more than 400 jurisdictions (including the City of Clovis), and the management skills to complete the project on time. HF&H performed admirably for the City of Clovis when engaged for previous procurement projects and staff strongly encourages using HF&H to assist in procuring the next 10-year contract for recycling and organics collection services.

**FISCAL IMPACT**

Sufficient funds are included in the 2024-2025 Community Sanitation budget.

**REASON FOR RECOMMENDATION**

HF&H has previously provided superior consultant services for the procurement of solid waste collection services for the City. They successfully assisted staff in procuring collection contracts in 1997, 2005, and 2015. The use of an experienced consultant with broad knowledge of the solid waste industry would positively augment the decision-making process and streamline the selection of a service provider. HF&H has shown in their proposal and past performance a complete and comprehensive understanding of the City's needs and that they are well-qualified to do this work.

**ACTIONS FOLLOWING APPROVAL**

The City Manager will execute a contract with HF&H Consultants, LLC to assist in the preparation and evaluation of a Request for Proposals (RFP) for recycling and organics waste collection services.

Prepared by: Glenn Eastes, Assistant Public Utilities Director

Reviewed by: City Manager *AH*

**CITY OF CLOVIS  
CONSULTANT SERVICE AGREEMENT**

This Consultant Services Agreement ("Agreement") is entered into between the City of Clovis, a California general law city ("City") and HF&H Consultants, LLC ("Consultant") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on \_\_\_\_\_ ("Effective Date").

**RECITALS**

- A. City desires to obtain recycling and organic procurement and consulting services ("Services") more fully described in **Exhibit A**, and, if applicable, as further set forth in the proposal from Consultant attached as **Exhibit B**, which are incorporated herein by reference.
- B. Consultant is engaged in the business of furnishing the Services and hereby warrants and represents that Consultant is qualified, experienced, and capable of performing the Services, and possesses any required licenses, certifications, security/bonding, and/or training necessary to perform the Services.
- C. City desires to retain Consultant, and Consultant desires to provide the City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

**AGREEMENT**

1. **Scope of Services.** Consultant shall perform the Services described in the Recitals and detailed in **Exhibits A & B**. Changes in the scope of Services, including the work performed and/or deliverables produced, shall be made in writing and particularly describe the changes in Services, including payment/costs and schedule/term, as applicable.
2. **Priority and Conflicts; Exclusions.** If the terms and requirements of this Agreement and/or **Exhibit A** conflict with **Exhibit B**, this Agreement and **Exhibit A** shall control. No contractual terms and/or conditions found in **Exhibit B** shall purport to waive, disclaim, or limit Consultant's liability, indemnification obligations, warranties, damages for breach or delay, or any security, bonding, or insurance requirements, and any such provisions shall have no force or effect with respect to this Agreement and the Services performed by Consultant.
3. **Term of Agreement; Commencement of Services; Schedule.** The term of this Agreement shall commence on \_\_\_\_\_, and Consultant shall begin performing the Services on that date, unless otherwise instructed by City. This Agreement shall terminate on \_\_\_\_\_, unless extended beyond that date by mutual consent of the Parties, for a period not exceeding 2 years. This Agreement may be terminated prior to the end of the term pursuant to Section 17 herein.

Consultant shall perform the Services according to the schedule set forth in **Exhibits A and/or B**, if applicable. If no schedule is set forth in **Exhibits A and/or B**, City and Consultant shall mutually agree on a schedule for performance of the Services and completion of any deliverables. The schedule shall be subject to modification based on the City's operational needs. City will notify Consultant in advance of any modification to the schedule.

4. **Payment for Services.** City shall pay Consultant for the Services performed pursuant to this



Agreement according to the rate(s) stated in **Exhibit A** or in Consultant's Proposal, which is set forth in **Exhibit B**, as applicable. The total amount paid by City to Consultant shall not exceed Fifty-Nine Thousand Nine Hundred Eighty Dollars (\$59,980.00).

The foregoing is inclusive of all labor, equipment, materials, costs and expenses, taxes, and overhead. City shall pay Consultant for Services satisfactorily performed pursuant to this Agreement. Consultant shall submit monthly invoices to City containing detailed billing information regarding the Services provided and unless otherwise specified in **Exhibit A**, City shall tender payment to Consultant within thirty (30) days after receipt of invoice.

5. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of City. Consultant is engaged in an independently established trade, occupation, or business to perform the Services required by this Agreement and is hereby retained to perform work that is outside the usual course of City's business. Consultant is free from the control and direction of City in connection with the manner of performance of the work. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City.

6. Consultant Representations; Standard of Care; Compliance with Law. Consultant represents that Consultant and any subcontractors utilized by Consultant are and will be qualified in the field for which Services are being provided under this Agreement and Consultant and any subcontractors are now, and will be throughout their performance of the Services under this Agreement, properly licensed, certified, secured/bonded, trained, and/or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement, as may be required by law. Consultant and its subcontractors shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with all applicable laws, regulations, and industry standards. Consultant shall comply with all Labor Code requirements for public works projects if applicable to Consultant's work under this Agreement.

7. Identity of Subcontractors and Sub-Consultants. Consultant shall, before commencing any work under this Agreement, provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's subcontractors.

8. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions and other work product prepared and performed by subcontractors for Consultant; and (c) entitle City to impose upon subcontractors the assignment rights found elsewhere in this Agreement.

9. Power to Act on Behalf of City. Consultant is not acting as an agent of City and shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to

the extent of such authorization.

10. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports upon reasonable request by City and of all final reports prepared by Consultant under this Agreement.

11. Ownership and Inspection of Documents. All data, tests, reports, analyses, documents, records, conclusions, opinions, recommendations and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs or other electronic devices ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of City. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

12. Confidentiality. All Work Product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

13. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects or work for which Consultant's services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production, internet website, social media, or other similar medium without the prior written consent of City.

14. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an improper interest, present or contemplated, in the Services which would affect Consultant's or its employees' performance of the Services and the Work Product produced. Consultant further warrants that neither Consultant nor any of its employees have real property, business interests or income that will be affected by the Services. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission.

15. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

16. City Right to Employ Other Consultants. Unless **Exhibit A** specifically provides that the Services City seeks pursuant to this Agreement are exclusive to Consultant, this Agreement and performance of the Services are non-exclusive and City reserves the right to employ other consultants in connection with the Services while this Agreement is in effect.

17. Termination of Agreement. This Agreement shall terminate as provided in Section 3, unless terminated earlier pursuant to the following:

a. Termination by City: For Convenience. City may at its discretion terminate this Agreement for convenience and without cause upon fourteen (14) days prior written notice to Consultant. Upon receipt of a termination notice pursuant to this subsection, Consultant shall promptly discontinue all Services affected, unless the notice directs otherwise.

b. Termination by City or Consultant: For Cause. Either party may terminate this Agreement upon ten (10) days prior written notice to the other party of a material breach, and a failure within that time period to cure or commence reasonable steps to cure the breach.

c. Compensation to Consultant Upon Termination. Consultant shall be paid compensation for Services satisfactorily performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its Services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified Section 4. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon termination of this Agreement, Consultant shall: (i) promptly discontinue all Services affected, unless the notice of termination directs otherwise; and (ii) deliver or otherwise make available to the City, without additional compensation, all Work Product and/or deliverables accumulated by the Consultant in performing this Agreement, whether completed or in process. Consultant may not refuse to provide such Work Product for any reason whatsoever.

18. Insurance. Consultant shall satisfy the insurance requirements set forth in **Exhibit C**.

19. Indemnity and Defense. Consultant hereby agrees to indemnify, defend and hold the City, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of Consultant or its subcontractors relating to the performance of Services described herein to the fullest extent permitted by law, unless the injuries or damages are the result of City's sole negligence or willful misconduct, subject to any limitations imposed by law. Consultant and City agree that said indemnity and defense obligations shall survive the expiration or termination of this Agreement for any items specified herein that arose or occurred during the term of this Agreement.

20. Taxes. Consultant agrees to pay all taxes, licenses, and fees levied or assessed by any governmental agency on Consultant incident to the performance of Services under this Agreement, and unemployment and workers' compensation insurance, social security, or any other taxes upon the wages of Consultant, its employees, agents, and representatives. Consultant agrees to obtain and renew an annual business tax certificate from City and pay the applicable annual business registration tax to City during the term of this Agreement.

21. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due

Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

22. Form and Service of Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served upon, or given to either party to this Agreement by the other party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods:

a. Personally delivered to the party to whom it is directed. Service shall be deemed the date of delivery.

b. Delivered by e-mail to a known address of the party to whom it is directed provided the e-mail is accompanied by an acknowledgment of receipt by the other party. Service shall be deemed the date of acknowledgement.

c. Delivery by a reliable overnight delivery service, ex., Federal Express, receipted, addressed to the addressees set forth below the signatories to this Agreement. Service shall be deemed the date of delivery.

d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered ninety-six (96) hours after deposit.

23. Entire Agreement. This Agreement, including the Exhibits and any other attachments, represents the entire Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

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

25. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities. Evidence of Consultant's authority is attached as **Exhibit D**.

26. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

27. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Consultant in the County of Fresno, California. Consultant shall perform the Services required under this Agreement in the County of Fresno, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either

party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

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

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other party to this Agreement. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

32. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class, includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

33. Performance Requirements. Notwithstanding, and in addition to the provisions of, Section 17 of this Agreement, if the Services performed hereunder are not in conformity with the requirements of this Agreement and other pertinent documents, City shall have the right to require Consultant to correct the work in conformity with the requirements of this Agreement at no additional increase in the payment to Consultant. Consultant shall promptly correct the work rejected by City for failing to conform to the requirements of the Agreement. Remedy for non-compliance or non-performance shall commence within 24 hours of notice. City shall also have the right to require Consultant to take all necessary steps to ensure future performance of the Services in conformity with the requirements of this Agreement. In the event Consultant fails to correct the work or fails to take necessary steps to ensure future performance of the Services in conformity with the requirements of this Agreement, City shall have the right to immediately terminate this Agreement for default.

34. Licensing. Consultant shall maintain the following license throughout the performance of this Agreement: Profession Engineer. Consultant shall also obtain and maintain a City of Clovis Business Tax Certificate prior to commencing performance of the Services.

[Signature Page Follows]

Now, therefore, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT

CITY OF CLOVIS

By: \_\_\_\_\_  
Rob Hilton, President

By: \_\_\_\_\_  
John Holt, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Party Identification and Contact Information:

**Consultant**  
HF&H Consultants, LLC  
Attn: Philip Mainolfi  
President  
590 Ygancio Valley Road, Suite 105  
Walnut Creek, CA 94596  
[pmainolfi@hfh-consultants.com](mailto:pmainolfi@hfh-consultants.com)  
(949) 504-5150

**City of Clovis**  
Public Utilities Department  
Attn: Glenn Eastes  
Assistant Public Utilities Director  
155 N. Sunnyside Ave.  
Clovis, CA 93611  
[glenne@ci.clovis.ca.us](mailto:glenne@ci.clovis.ca.us)  
(559) 324-2684

ATTEST

\_\_\_\_\_  
Briana Parra, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Scott G. Cross, City Attorney

file:///J:\WDOCS\00601\037\AGT\00661286.DOC

# EXHIBIT A

## DESCRIPTION OF SERVICES

### SCOPE OF SERVICES

The work involves the development of an RFP package and to provide technical support through the evaluation process for the Organic Waste and Recycling Materials Collection and Processing.

### SCHEDULE

If not otherwise specifically set forth in the Scope of Services or Proposal, the services shall occur pursuant to an agreed upon schedule, which is subject to modification based on the City's operational needs. City will notify Consultant in advance of any modification to the schedule.

### COMPENSATION AND RATES

Total compensation, including expense reimbursement, shall not exceed \$59,980.00 per Exhibit B.

**CONTRACT TOTAL: \$59,980.00**

# **EXHIBIT B CONSULTANT PROPOSAL**



590 Ygnacio Valley Road, Suite 105  
Walnut Creek, California 94596  
Telephone: 925/977-6950

Northern California  
Southern California  
[www.hfh-consultants.com](http://www.hfh-consultants.com)

June 7, 2024  
Glenn Eastes  
Assistant Public Utilities Director  
City of Clovis  
155 North Sunnyside Avenue,  
Clovis, CA, 93611

**Subject: Proposal for Competitive Procurement for Organic Waste and Recyclable Materials Collection and Processing**

Dear Glenn Eastes,

HF&H Consultants, LLC (HF&H) is pleased to submit this proposal to the City of Clovis (City) in response to the City's previous request. The City's current agreement for collection, processing, and marketing of recyclable and organic materials with Allied Waste Services of North America, LLC (Republic) is set to expire on July 31, 2025. The pending expiration leaves the City the challenge of taking urgent action without compromising long-term success and value to their rate payers. By selecting HF&H, the City will benefit from our prior work on the City's franchise agreement and our extensive experience designing and implementing SB 1383 compliant programs statewide. By leveraging this existing experience and the wealth of resources developed and accumulated, HF&H proposes to expedite the procurement process to obtain a new service provider within the required timeframe (typically procurements take 18-24 months).

HF&H appreciates the opportunity to propose on this project. We have developed the scope to include development of an RFP Package and to provide technical support through the evaluation process. Because we are not leading the process through all stages of the process, we cannot indemnify the City for its modifications to documents provided. As always, HF&H looks forward to the opportunity to further discuss our proposal with the City and make scope alterations as necessary. Please don't hesitate to contact us directly.

I, Rob Hilton, will be the City's authorized representative. Philip Mainolfi will be the City's contact throughout the project. Philip's contact information is as follows:

Philip Mainolfi, Senior Project Manager  
HF&H Consultants, LLC  
590 Ygnacio Valley Rd, Suite 105, Walnut Creek, CA 94596  
Direct: (949) 504-5150 | Fax: (925) 977-6955 | Email: [pmainolfi@hfh-consultants.com](mailto:pmainolfi@hfh-consultants.com)

Glenn Eastes  
June 7, 2024  
Page 2 of 6

## **Task 1: Assess Existing Agreement and Amendments**

### **Subtask 1.A: Develop Contract Profile**

HF&H will review the current Republic Services franchise agreement and amendments, the most recent rate adjustment calculation, and the current solid waste rate schedule in order to prepare an assessment of the current agreement and amendments ("Contract Profile"). The Contract Profile will compare and contrast existing services to a state-of-the-art solid waste agreement and modern industry practices. We will indicate whether the current program services are, or are not, compliant with current, pending, and potential future CalRecycle mandates, as well as include our preliminary recommendations for discussion in the Contract Profile.

Ever changing legislation requires cities to continually address new solid waste and recycling issues. HF&H will ensure the agreement addresses emerging issues such as Senate Bill 54 (Plastic Pollution Prevention and Packaging Producer Responsibility Act), the California Air Resources Board Advanced Clean Fleets Regulations, among other regulations. The City will also benefit from an agreement that better addresses required services (SB 1383, AB 341, AB 1826), performance standards, reporting and auditing requirements, and diversion requirements, among other enhancements.

Our work product will facilitate an informed discussion with City staff on solid waste and recycling practices and services, including the latest trends in the industry, existing and upcoming relevant regulatory requirements, other important developments, and, most importantly, how these items may impact the City and its solid waste contracting needs. It is important that the City has a realistic understanding of not only what is changing in the industry in general, but what is specifically available to the City now and in the relevant future.

#### **HF&H Role & Deliverables:**

- Document request to City
- Draft Contract Profile

#### **City Staff Role:**

- Gather and provide requested documents

### **Subtask 1.B: Kick-off Meeting with City Staff**

To guide our kick-off meeting with City staff, we will utilize the Contract Profile that was developed in Task 1.A to further discuss the programs and services that the City wishes to include in the new agreement. This highly collaborative process between HF&H and the City takes approximately three hours to

Glenn Eastes  
June 7, 2024  
Page 3 of 6

complete. Furthermore, we will share our insight on what has worked in the many agreements that we have developed for clients, as well as explain the requirements of current regulations. The results of this meeting will lead to the drafting of the RFP and agreement. We will also confirm the target RFP timeline during this meeting.

**HF&H Role & Deliverables:**

- Update Contract Profile and Project Schedule based on City feedback

**City Staff Role:**

- Participate in a 3- to 4-hour kick-off meeting

**Task 2: Prepare and Issue Request for Proposals**

**Subtask 2.A: Gather and Review Operating Data**

We will collect any data available regarding the current services provided including, but not limited to, the current franchise agreement and any amendments, subscription information, current recycling and organics tonnages collected, participation rates in the residential and commercial recycling and organics programs, recent quarterly or annual reports, and general route statistics. We will prepare data collection forms to assist the City and/or Republic Services in providing additional information in a user-friendly format or we will leverage available reports or documentation to compile the information for the City's RFP. It has been our experience that when proposers are confident about the accuracy of operating data contained in the RFP, they propose lower rates and include fewer contingency costs. Collecting data in this manner may also uncover additional issues, such as poor reporting or service issues to be addressed in the new agreement.

**HF&H Role & Deliverables:**

- Prepare data collection forms and compile current service data

**City Staff Role:**

- Assist in obtaining data from Republic Services

**Subtask 2.B: Prepare Draft RFP and Agreement**

Based on the information and direction received in previous tasks, we will prepare the draft RFP, the draft franchise agreement, the draft proposer's cost forms, and criteria to be used in evaluating the proposals received. We will prepare a set of cost forms to guide the proposers in their cost proposal by ensuring the forms contain sufficient detail, allowing the City and HF&H to evaluate the proposer's costs, revenue

Glenn Eastes  
June 7, 2024  
Page 4 of 6

requirement, and collection rates. The cost proposal forms are expected to reflect the basic services required in the Agreement and additional service enhancements or alternative services shall be proposed on a separate, but similar, set of cost forms. Separating the cost proposals into base and additional services allows greater comparison between proposers and isolation of the cost for additional or ancillary services.

Key items to be included in the RFP package are:

Draft Agreement – We will attach the draft of the agreement the successful proposer will be expected to sign, including insurance requirements, performance standards with liquidated damages and default provisions for specific performance failures, and indemnifications. Including the agreement in the RFP reduces negotiation efforts. The RFP will require proposers to identify any exceptions they plan to take to the agreement in their proposal.

Contract Summary – We will draft a summary of service and contract requirements included in the attached draft agreement.

Data – We will collect, review, and provide detailed operational and service data to assist proposers in developing their proformas.

Proposer Worksheets – We will include proposer worksheets designed for proposers to enter proposed rates and supporting cost data, including proposed diversion plan specifications. Proposers likely to propose on the City's RFP are accustomed to HF&H forms and have provided favorable feedback on their design and ease of use.

RFP Submittal Requirements – HF&H will include a description of RFP requirements and an outline for proposers to follow in assembling their proposals in order to ensure that the proposers do not miss requirements and that the City can easily locate key information in the proposal. Requirements include items such as diversion program descriptions, transition and implementation plans, firm information, and experience citations.

**HF&H Role & Deliverables:**

- Draft RFP, cost forms, and Agreement
- Evaluation criteria

**City Staff Role:**

- N/A

**Subtask 2.C: Upon Review by the City Attorney and City Staff, Revise RFP and Agreement**

We will submit the draft RFP and agreement to City staff for review under Task 2.B. City staff is requested to make any changes directly to the documents in a strike-and-replace format. The City Attorney will be

Glenn Eastes  
June 7, 2024  
Page 5 of 6

responsible for confirming that any proposed City fees comply with applicable legal statutes, such as Prop 218 and Prop 26. After City staff reviews the documents and provides us with their written comments, we will make appropriate revisions once to these documents for a final review by the City.

**HF&H Role & Deliverables:**

- Updated draft RFP and Agreement based on City comments
- Meeting/teleconference to review City redlines

**City Staff Role:**

- Review draft RFP and Agreement and provide redlined comments to RFP and Agreement

**Task 3: Provide Technical Support For Proposal Evaluation**

**Subtask 3.A Provide Technical Support For Proposal Evaluation**

Upon submission of proposals, HF&H will provide the City with technical support and advisory services at the City's direction. Until proposals are received, neither party can know exactly what tasks will be necessary, but potential tasks may include:

- Reviewing proposals for completeness
- Supporting the evaluation of complete proposals
- Analyzing rate and cost proposals
- Preparing follow-up questions for proposers
- Reviewing responses and clarifying unresolved issues
- Discussing City Staff's preliminary evaluation
- Interviewing proposers
- Contacting references for recommended proposers
- Reviewing evaluation report

**HF&H Role & Deliverables:**

- Up to 62 hours of technical support and advisory services

**City Staff Role:**

- Evaluate RFP and request advisory support as needed

Glenn Eastes  
June 7, 2024  
Page 6 of 6

Again, we thank you for the opportunity to submit this proposal. Should you wish to further discuss or amend the proposed scope, please do not hesitate to contact myself by email at [rchilton@hfh-consultants.com](mailto:rchilton@hfh-consultants.com) or by phone at (925) 977-6959. Additionally, you can contact Philip Mainolfi by email at [pmainolfi@hfh-consultants.com](mailto:pmainolfi@hfh-consultants.com) or by phone at (949) 504-5150.

Sincerely,  
HF&H CONSULTANTS, LLC



Rob Hilton  
President

Attachment – Fee Estimate

## ATTACHMENT - FEE ESTIMATE

DESCRIPTION	Sr. Vice President	Sr. Project Manager	Senior Associate	Administrative Assistant	Total Hours	Total Fees
	\$ 350.00	\$ 305.00	\$ 220.00	\$ 160.00		
<b>Task 1: Assess Existing Agreement and Amendments</b>						
1.A Develop Contract Profile	1	6	16	2	25	\$ 6,020.00
1.B Kick-Off Meeting with City Staff	3	4	4	0	11	\$ 3,150.00
<b>Task 2: Prepare and Issue Requests for Proposals</b>						
2.A Gather and Review Operating Data	1	4	8	0	13	\$ 3,330.00
2.B Prepare Draft RFP and Agreement	8	16	60	16	100	\$ 23,440.00
2.C Upon Review by the City Attorney and City Staff, and Subcommittee, Revise RFP and Agreement	4	8	14	3	29	\$ 7,400.00
<b>Task 3: Provide Technical Support For Evaluation</b>						
3.A Provide Technical Support For Evaluation	10	20	32	0	62	\$ 16,640.00
<b>Total</b>						
Total Hours	27	58	134	21	240	N/A
Total Fees	\$ 9,450	\$ 17,690	\$ 29,480	\$ 3,360	\$ -	\$ 59,980.00
<b>Total Fees Including Expenses</b>	<b>\$ 9,450</b>	<b>\$ 17,690</b>	<b>\$ 29,480</b>	<b>\$ 3,360</b>	<b>\$ -</b>	<b>\$ 59,980.00</b>

## EXHIBIT C

# INSURANCE REQUIREMENTS

Prior to commencement of the Services, Consultant shall take out and maintain at its own expense the insurance coverage required by this **Exhibit C**. Consultant shall cause any subcontractor with whom Consultant contracts for the performance of Services pursuant to this Agreement to take out and maintain equivalent insurance coverage. Said insurance shall be maintained at all times during Consultant's performance of Services under this Agreement, and for any additional period specified herein. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to the City.

a. Minimum Limits of Insurance. Consultant shall maintain the following types of insurance with limits no less than specified:

(i) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$2,000,000.00 per occurrence or claim and \$2,000,000 in the aggregate. Said insurance shall be maintained for an additional period of five years following the earlier of completion of Consultant's Services under this Agreement or termination of this Agreement.

(ii) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$2,000,000 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 (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(iii) Worker's Compensation Insurance as required by the State of California.

(iv) Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(v) Umbrella or Excess Liability. In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

If Consultant maintains higher limits than the minimums shown above, the City shall be entitled to coverage at the higher limits maintained.

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

(i) The City, its officers, officials, employees, agents, and volunteers are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33 or CG 20 38; and CG 20 37 forms if later revisions used).



(ii) For any claims related to the Services performed pursuant to this Agreement, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(iii) Each insurance policy required by this section shall be endorsed to state that the City shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, or material modification of the coverages required herein.

(iv) Consultant grants to the City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant 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 City has received a waiver of subrogation endorsement from the insurer.

(v) Any deductibles or self-insured retentions must be declared to and approved by the City of Clovis Risk Services. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Consultant shall deliver to City written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Consultant's right to be paid any compensation under this Agreement. City's failure, at any time, to object to Consultant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of City's right to insist upon such insurance later.

d. Maintenance of Insurance. If Consultant fails to furnish and maintain the insurance required by this section, City may (but is not required to) purchase such insurance on behalf of Consultant, and the Consultant shall pay the cost thereof to City upon demand, and City shall furnish Consultant with any information needed to obtain such insurance. Moreover, at its discretion, City may pay for such insurance with funds otherwise due Consultant under this Agreement.

e. Subcontractors. If the Consultant should subcontract all or any portion of the work to be performed in this Agreement, the Consultant shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Consultant to City under this Agreement.

# **EXHIBIT D SIGNING AUTHORITY**



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Administration  
 DATE: July 1, 2024  
 SUBJECT: Consider Approval - City of Clovis Youth Commission Bylaws.

**Staff:** Chad McCollum, Econ. Development, Housing and Comm. Director / Noor Riar, Co-Chair / Eli Pugliese, Co-Chair

**Recommendation:** Approve

ATTACHMENTS: 1. City of Clovis Youth Commission Bylaws

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### RECOMMENDATION

For the City Council to approve the City of Clovis Youth Commission Bylaws, by which, future Youth Commissions will be organized and operated.

### EXECUTIVE SUMMARY

The inaugural City of Clovis Youth Commission has drafted and approved recommended bylaws for future City of Clovis Youth Commissions. These bylaws outline eligibility, goals, and responsibilities.

### BACKGROUND

The City of Clovis Youth Commission was established by the Clovis City Council by unanimous decision in October of 2023 for the purpose of engaging youth voices in the City of Clovis. The Commission was formed by the Clovis City Council to promote civic engagement among the youth of Clovis and to foster a sense of ownership and responsibility in shaping the City's future.

Youth Commissioners met monthly from January – May 2024 learning about aspects of City of Clovis government and operations. This experience and knowledge was used to create a document which outlines how future classes of the City of Clovis Youth Commission will be operated.

The bylaws were completed and unanimously approved by the Clovis Youth Commissioners on May 8, 2024.

**FISCAL IMPACT**

There are funds set in the 2024-2025 budget to cover items associated with the Youth Commission.

**REASON FOR RECOMMENDATION**

Staff has worked closely with the Youth Commissioners to ensure the bylaws document provides direction and parameters for future Commissioners, while remaining flexible enough to allow adjustments as needed.

**ACTIONS FOLLOWING APPROVAL**

Once approved, City of Clovis Youth Commission Bylaws will be used by staff and future Commissioners to recruit members, organize and run meetings, and execute the goals of the Clovis City Council.

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

Reviewed by: City Manager 

# CITY OF CLOVIS YOUTH COMMISSION

AGENDA ITEM NO. 13.



Presented on

July 1, 2024

Clovis City Hall  
Council Chambers

## YOUTH COMMISSION BYLAWS

Attachment 1

## **Clovis Youth Commission Bylaws**

Voted on unanimously and approved by the City of Clovis Youth Commission on May 8, 2024

### **Establishment:**

The City of Clovis Youth Commission was established by the Clovis City Council by unanimous decision in October of 2023 for the purpose of engaging youth voices in the City of Clovis. The City Council desires to promote civic engagement among the youth of Clovis and to foster a sense of ownership and responsibility in shaping the City's future.

### **Duties and Responsibilities:**

The City of Clovis Youth Commissioners will hold office October – April each year, with Commissioners being selected in the summer and fall leading into the new school year.

The City of Clovis Youth Commission will be responsible for the following:

- Meeting monthly to set and accomplish goals outlined by the Youth Commission, Clovis City Council, and staff.
- Represent Clovis Youth at designated city events and activities.
- Plan and execute a project benefiting the youth of City of Clovis.
- Present to Clovis City Council annually.

### **Membership:**

To be eligible to apply for a seat on the Clovis Youth Commission, applicants must:

- Reside within the City of Clovis.
- Be in their Sophomore, Junior, or Senior year
  - Commissioners can serve up to 3 years.
- Apply, interview and be selected by a panel consisting of City staff and Youth Commissioners.
- The City of Clovis Youth Commission will consist of up to 21 members.

Application Process, terms:

- Applications will be accepted throughout the summer and close on a date determined by staff.
- Two step interview process, with a panel consisting of staff and Commissioners going into their Senior Year.
- Council approval will be required.
- A vacancy left by a Commissioner unable to fulfill their duties will be left open until the following year.
- A Commissioner who misses more than half of the monthly meetings and activities by December will be asked to forfeit their office.
- A leave of absence can be requested to staff due to circumstances outside the control of the Commissioner. Staff will make the final determination.

**Leadership Roles:**

At the beginning of each school year, Co-Chairs will be selected to lead the Commission. Sophomores and Juniors will be eligible for nomination and all Commissioners will vote.

**Meetings**

Commission meetings are subject to the Brown Act.

- Commission will meet once a month, date and time to be determined by staff.

**Annual Project**

City of Clovis Youth Commission will select, plan, and carry out a project benefiting the Youth of the City of Clovis. Projects may be assigned by Youth Commission, City Council, or Staff. A project will have a significant impact on services, facilities, or programs benefiting Clovis Youth.

**Annual Report to the City Council:**

Representatives from the Youth Commission will present to the Clovis City Council annually.



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Administration  
 DATE: July 1, 2024  
 SUBJECT: Consider – Update and Recommendations from the Historic Preservation Committee.

**Staff:** John Holt, City Manager

**Recommendation:** Consider Update and Provide Direction

ATTACHMENTS: 1. March 6, 2023, staff report to Council on HPC  
 2. Draft Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code Creating a Historic Preservation Committee

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### RECOMMENDATION

For the City Council to consider an update on the Historic Preservation Committee (HPC) and provide policy direction going forward.

### EXECUTIVE SUMMARY

The origin of the creation of a City of Clovis Historic Preservation Committee began with a May 16, 2022, letter from Sayre Miller, representing the Clovis-Big Dry Creek Historic Society requesting the City Council create a Historic Preservation Committee. The letter indicated that the Clovis-Big Dry Creek Historic Society created a committee approximately three years prior to advocate for the preservation of the Carnegie Library building in Old Town Clovis (325 Pollasky Ave, Clovis, CA 93612). The Carnegie Library is owned by the Clovis Chamber of Commerce and the City of Clovis has limited to no control over how that building is used. The issue was before council on three different occasions in 2022. On February 13, 2023, the Clovis City Council directed staff to seek the nominations from City Council for appointment to the Clovis Historic Preservation Committee.



Motion from February 13, 2023 – “Motion for each Councilmember to appoint 1-2 members who live, work, own property, or can articulate their Historic ties to Clovis to the ad hoc committee by the February 21, 2023, Council Meeting. Motion for approval by Councilmember Bessinger, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.”

**Appointed:**

- Mayor Ashbeck - Sayre Miller / Adam Holt
- Mayor Pro Tem Mouanoutoua - John Wright / Tom Wright
- Councilmember Basgall - Desiree Haus / Rachael Orlando
- Councilmember Bessinger - ~~Ron Silva~~ / Greg Newman (Mr. Silva dropped out for personal reasons before the first meeting)
- Councilmember Pearce - Cora Shipley / Mark Wall

The Committee was charged with:

- a. Identifying criteria they would use to assess historic resources in the City of Clovis.
- b. Assessing historic resources in the City of Clovis – this would consist of surveying historic resources within the city limits of the City of Clovis. The historic survey would not designate a property as historic. Instead, the survey would identify properties that could be a historic resource.
- c. Provide recommendations to the City Council on the preservation of those identified resources.

The Committee is now prepared to report back to City Council.

**BACKGROUND**

The origin of the creation of a Historic Preservation Committee began with a May 16, 2022, letter from Sayre Miller, representing the Clovis-Big Dry Creek Historic Society requesting the City Council create a Historic Preservation Committee. The letter indicated that the Clovis-Big Dry Creek Historic Society created a committee approximately three years prior to advocate for the preservation of the Carnegie Library building in Old Town Clovis. The Carnegie Library is owned by the Clovis Chamber of Commerce and the City of Clovis has limited control over how that building is used.

On May 2, 2022, the City Council received an update on 325 Pollasky Avenue, Clovis Chamber of Commerce building. On May 16, 2022, the Clovis-Big Dry Creek Historic Society submitted a letter to the City Manager requesting that the City form a Historic Preservation Commission. From the May 2, 2022, meeting, it was the consensus of the Council to pursue the formation of a Historic Preservation Committee to assist the effort in updating and preserving the building.

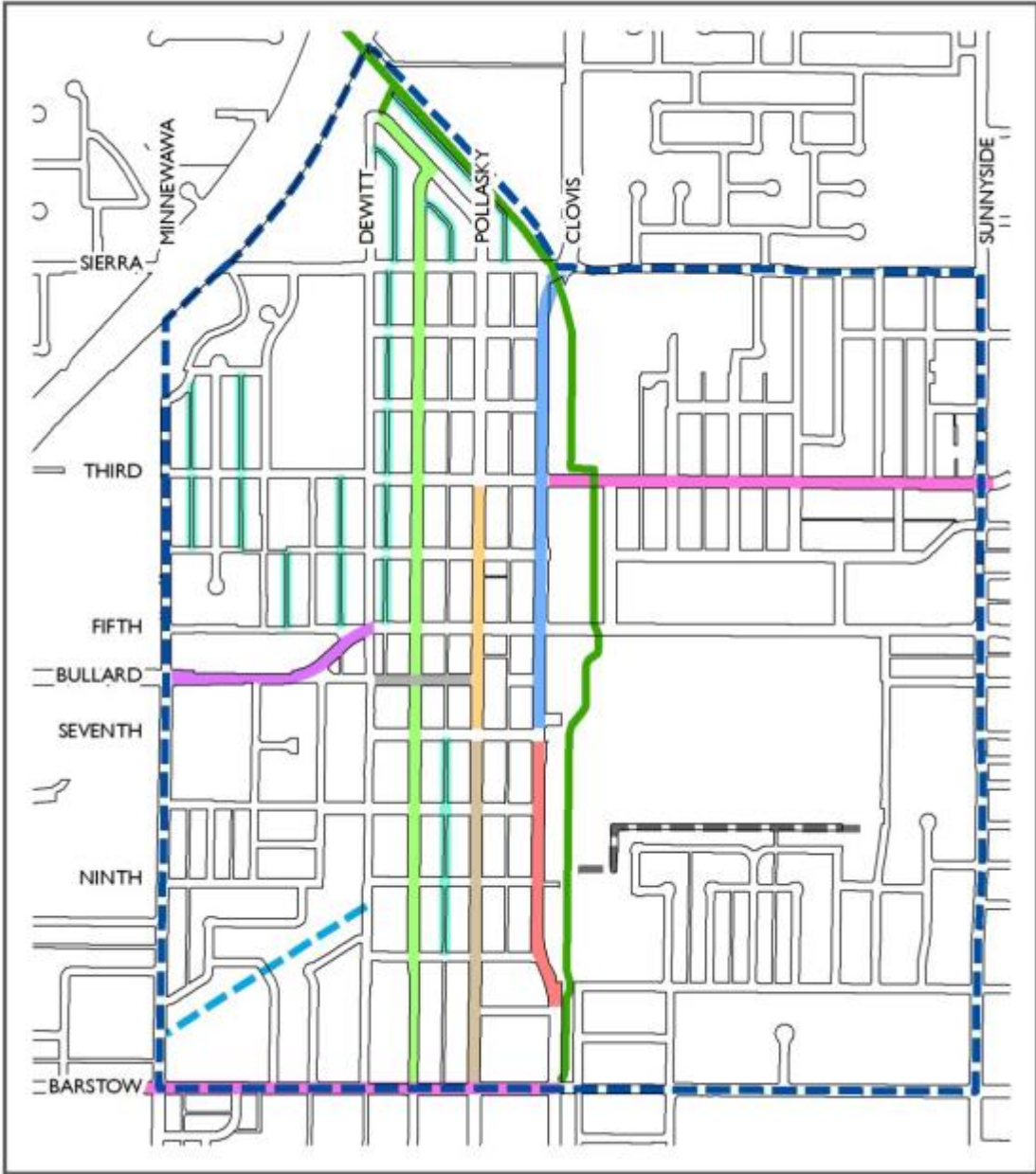
On June 6, 2022, the City Council considered the request from Clovis-Big Dry Creek Historic Society for the Council to create a Historic Preservation Commission. From the June 6, 2022, meeting Council directed staff to establish the Advisory Board as described in the Clovis Municipal Code 9.120.020 - *Historic Preservation Board. A City review board designated to promote the cultural, economic, educational, and general welfare of the City through the preservation and protection of buildings, sites, structures, areas, and districts of historic significance and interest.*

On September 12, 2022, staff presented a two options for Council to consider: **Option A** - Establish a temporary committee that would assess historic resources in the City of Clovis and provide recommendations to City Council on the protection of those identified resources; or **Option B** - Consider Introduction – Ord. 22-\_\_\_\_, an Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code creating a Historic Preservation Board.

City Council chose **Option A** with the following motion: to establish an ad hoc committee that would assess historic resources in the City of Clovis and provide recommendations to the City Council on the protection of those identified resources. Over the past year staff has met with the HPC monthly and is now reporting back to council.

Committee approved the following recommendations to City Council:

- a. Final criteria to be used to assess properties in Clovis with the goal of promoting and preserving historic resources:
  - i. Age (75 years plus).
  - ii. An event that made a significant contribution to the broad patterns of local, regional history, or the cultural heritage of Clovis.
  - iii. Is associated with the lives of persons important to local, California, or national history.
  - iv. Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values.
  - v. Is associated with information, items, artifacts or is important to the prehistory or history of the City of Clovis, California, or the nation.
  - vi. Is the resource within the Central Clovis Specific Plan (CCSP) area.
- b. Designate the original one (1) square mile of Clovis as a historic district to prevent unregulated and insensitive change (Barstow to the South, Minnewawa to the east, Sierra to the north, and Sunnyside to the east) See image below.
- c. Direct staff to bring back before City Council for reconsideration the 2022 Draft Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code Creating a Historic Preservation Committee (Attachment 2).
- d. As part of the General Plan Update, create a specific stand-alone element addressing historic resources with goals, policies, and actions.



One Square Mile - Source: Central Clovis Specific Plan

**FISCAL IMPACT**

Depending on the final recommendation of the council, there will likely be a cost incurred to implement. There is currently no money budgeted to support the implementation and enforcement of supporting a Historic Preservation Committee and associated actions necessary to identify and preserve historic resources as well as enforcing the ordinance should council approve.

**REASON FOR RECOMMENDATION**

City Council directed the creation of a Historic Preservation Committee to:

- a. Identifying criteria they would use to assess historic resources in the City of Clovis.
- b. Assessing historic resources in the City of Clovis – this would consist of surveying historic resources within the city limits of the City of Clovis. The historic survey would not designate a property as historic. Instead, the survey would identify properties that could be a historic resource.
- c. Provide recommendations to the City Council on the preservation of those identified resources.

The Committee is now prepared to report out.

**ACTIONS FOLLOWING APPROVAL**

Staff will implement Council direction.

Prepared by: John Holt, City Manager

Reviewed by: City Manager *JH*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Administration  
 DATE: March 6, 2023  
 SUBJECT: Consider Approval – Appointments to the City of Clovis Historic Preservation Committee.

**Staff:** John Holt, City Manager

**Recommendation:** Approve

ATTACHMENTS: 1. September 12, 2022, staff report regarding Historic Preservation Committee

### CONFLICT OF INTEREST

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

### RECOMMENDATION

Staff is recommending the City Council approve the appointments to the Clovis Historic Preservation Committee.

### EXECUTIVE SUMMARY

On February 13, 2023, the Clovis City Council directed staff to seek the nominations from City Council for appointment to the Clovis Historic Preservation Committee. Staff has received nominations from City Council.

Motion from February 13, 2023 – “Motion for each Councilmember to appoint 1-2 members who live, work, own property, or can articulate their historical ties to Clovis to the ad hoc committee by the February 21, 2023, Council Meeting. Motion for approval by Councilmember Bessinger, seconded by Councilmember Mouanoutoua. Motion carried by unanimous vote.”

### Nominated for appointment:

- Mayor Ashbeck - Sayre Miller / Adam Holt
- Mayor Pro Tem Mouanoutoua - John Wright / Tom Wright

- Councilmember Basgall - Desiree Haus / Rachael Orlando
- Councilmember Bessinger - Ron Silva / Greg Newman
- Councilmember Pearce - Cora Shipley / Mark Wall

Actions required and charge of the committee based on prior council action:

1. Have City Council appoint 1 – 2 members each.
2. Committee Members must live, work, own property, or can articulate their historical ties to Clovis to the ad hoc committee.
3. This is an ad hoc committee that will meet until the objectives are achieved.
4. The Committee will be subject to the Brown Act.
5. The Committee will be charged with:
  - a. Identifying criteria they would use to assess historic resources in the City of Clovis.
  - b. Assessing historic resources in the City of Clovis – this would consist of surveying historic resources within the city limits of the City of Clovis. The historic survey would not designate a property as historic. Instead, the survey would identify properties that could be a historic resource.
  - c. Provide recommendations to the City Council on the preservation of those identified resources.
6. The Committee would report back to City Council on items included in number 5 above.

Staff is recommending the Committee meet on a monthly basis until they are prepared to report back to City Council.

### **BACKGROUND**

The origin of the creation of a Historic Preservation Committee began with a May 16, 2022, letter from Sayre Miller, representing the Clovis-Big Dry Creek Historical Society requesting the City Council create a Historic Preservation Committee. The letter indicates that the Clovis-Big Dry Creek Historical Society created a committee approximately three years ago to advocate for the preservation of the Carnegie Library building in Old Town Clovis. The Carnegie Library is owned by the Clovis Chamber of Commerce and the City of Clovis has limited control over how that building is used.

Attachment 1 includes all background material. On May 2, 2022, the City Council received an update on 325 Pollasky Avenue, Clovis Chamber of Commerce building. On May 16, 2022, the Clovis-Big Dry Creek Historical Society submitted a letter to the City Manager requesting that

the City form a Historical Preservation Commission. From the May 2, 2022, meeting, it was the consensus of the Council to pursue the formation of a historical preservation committee to assist the effort in updating and preserving the building.

On June 6, 2022, the City Council considered the request from Clovis-Big Dry Creek Historical Society for the Council to create a Historical Preservation Commission. From the June 6, 2022, meeting Council directed staff to establish the Advisory Board as described in the Clovis Municipal Code 9.120.020 - *Historic Preservation Board. A City review board designated to promote the cultural, economic, educational, and general welfare of the City through the preservation and protection of buildings, sites, structures, areas, and districts of historic significance and interest.*

On September 12, 2022, staff presented a two options for Council to consider: **Option A** - Establish a temporary committee that would assess historic resources in the City of Clovis and provide recommendations to City Council on the protection of those identified resources; or **Option B** - Consider Introduction – Ord. 22-\_\_\_\_, an Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code creating a Historic Preservation Board.

City Council chose Option A with the following motion: to establish an ad hoc committee that would assess historic resources in the City of Clovis and provide recommendations to the City Council on the protection of those identified resources. Membership of the committee will consist of ten (10) members and each member shall be appointed by the City Council following a recommendation by the Mayor and members must be a resident of the City of Clovis.

In October 2022 City Council provided additional direction to table the creation of the Committee until after the November 8, 2022, election. Staff is now returning to City Council to confirm the actions taken on September 12, 2022.

On February 13, 2023, staff returned to council seeking direction on path forward.

### **FISCAL IMPACT**

There is currently no funding to support the establishment of a Historic Preservation Committee. Staff time to support would likely be limited but it would have an impact on workload.


### **REASON FOR RECOMMENDATION**

Staff is now returning to the City Council to approve the appointments to the Clovis Historic Preservation Committee.

### **ACTIONS FOLLOWING APPROVAL**

Staff will implement Council direction.

Prepared by: John Holt, City Manager

Reviewed by: City Manager 



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Administration  
 DATE: September 12, 2022  
 SUBJECT: Consider Various Options Regarding the Creation of a Historic Preservation Board:

a. Establish a temporary committee that would assess historic resources in the City of Clovis and provide recommendations to City Council on the protection of those identified resources;

b. Consider Introduction – Ord. 22-\_\_\_, An Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code creating a Historic Preservation Board;

c. Take no action at this time.

**Staff:** Andrew Haussler, Assistant City Manager / Renee Mathis, Director of Planning and Development Services

**Recommendation:** Consider options and provide staff policy direction

ATTACHMENTS:

1. Background on 325 Pollasky – Clovis Chamber of Commerce
2. May 2, 2022, Staff Report - Update on 325 Pollasky Avenue (Clovis Chamber of Commerce Building)
3. May 16, 2022, Letter from the Clovis-Big Dry Creek Historical Society to form a historical preservation commission
4. June 6, 2022, Staff Report - Consider – A request from Clovis-Big Dry Creek Historical Society for the City Council to Create a Historical Preservation Commission
5. Draft Ordinance

### CONFLICT OF INTEREST

None.

### RECOMMENDATION

For the City Council to consider various options regarding the creation of a Historic Preservation Board (Board) and provide staff direction going forward.



## EXECUTIVE SUMMARY

On May 2, 2022, the City Council received an update on 325 Pollasky Avenue, Clovis Chamber of Commerce building (Attachment 2). On June 6, 2022, City Council considered a request from Clovis-Big Dry Creek Historical Society for the City Council to create a Historical Preservation Commission (Attachment 4). From the June 6, 2022, meeting, Council directed staff to establish an advisory board as described in the Clovis Municipal Code 9.120.020.

Over the past two months, staff has worked with the City Attorney's office in developing a draft ordinance creating a Historic Preservation Board. This is proposed to be an advisory board to the Planning Commission and City Council tasked with developing an initial list of historic landmarks and historic sites within the Historic District for consideration. The Board would also be responsible for maintaining that list of historic landmarks and historic sites. The draft ordinance establishes the process by which an initial list of historic landmarks and historic sites could be established and how one might be added at a future date.

The following are challenges that have been identified during the development of the draft ordinance:

1. There is no funding for the creation and support of Board.
2. In communicating with the City of Visalia who established a Historic Preservation Advisory Committee in 1979, there is a significant amount of work in establishing the criteria and initial list which could initially consume full-time support of one staff member. Once established, ongoing support is significantly reduced.
3. Staff would likely need to outsource support to the Board such as an architect, engineer, or historian (assuming the initial Board was not made up of this expertise).
4. There is currently no in-house expertise on historic preservation.
5. Defining a historic landmark and maintenance of it is subjective – staff would be charged with defining what is significant, minor, and maintenance work.

After developing the draft ordinance, staff is recommending the City Council consider the following options:

- A. Establish a temporary committee that would assess historic resources in the City of Clovis and provide recommendations to City Council on the protection of those identified resources;
- B. Consider Introduction – Ord. 22-\_\_\_\_, an Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code creating a Historic Preservation Board;
- C. Take no action at this time.

## BACKGROUND

On May 2, 2022, the City Council received an update on 325 Pollasky Avenue, Clovis Chamber of Commerce building (Attachment 2). On May 16, 2022, the Clovis-Big Dry Creek Historical Society submitted a letter to the City Manager requesting that the City form a Historical Preservation Commission (Attachment 3). Attachment 1 provides some of the history on the building located at 325 Pollasky Avenue. From the May 2, 2022, meeting, it was the consensus of the Council to pursue the formation of a historical preservation committee to assist the effort in updating and preserving the building.

On June 6, 2022, the City Council considered the request from Clovis-Big Dry Creek Historical Society for the Council to create a Historical Preservation Commission (Attachment 4). From the June 6, 2022, meeting Council directed staff to establish the Advisory Board as described in the Clovis Municipal Code 9.120.020 - *Historic Preservation Board. A City review board designated to promote the cultural, economic, educational, and general welfare of the City through the preservation and protection of buildings, sites, structures, areas, and districts of historic significance and interest.*

Over the past two months, staff has worked with the City Attorney's office to develop a draft ordinance to create a Historic Preservation Board, provided as Attachment 5. Through that process, staff has developed an alternative option to consider: to establish a temporary committee that would assess historic resources in the City of Clovis and provide recommendations to the City Council on the protection of those identified resources. A third option available is to continue the City's current policies on historical preservation with Council taking no action at this time.

The following is a review of the three proposed options:

**Option A** - Establish a temporary committee that would assess historic resources in the City of Clovis and provide recommendations to City Council on the protection of those identified resources.

After developing the draft ordinance and realizing that staff has very little expertise regarding historic sites nor the criteria to judge, staff wanted to present the option to City Council to consider forming a committee that would be charged with assessing historic resources in the City of Clovis and providing recommendations on tools the Council could implement to protect the identified resources, such as an ordinance. The committee could stand up for a specified period and provide recommendations to the City Council at its conclusion.

**Option B** - Consider Introduction – Ord. 22-\_\_\_\_, an Ordinance of the City Council of the City of Clovis adding Chapter 9.81 of Title 9 of the Clovis Municipal Code creating a Historic Preservation Board:

In crafting the ordinance and knowing that it will likely need to be amended, staff is recommending the City Council consider narrowing the scope of the ordinance initially to allow somewhat of a learning curve upon initial implementation. It should also be noted that the City is now on the front end of updating the 2014 General Plan, which could be an opportunity to refine the ordinance in the future.

### Highlights of the draft ordinance:

A summary of the ordinance and the proposed draft ordinance is in Attachment 5.

#### Purpose:

The proposed Historic Preservation Ordinance establishes a Historic Preservation Board (Board). The Board would be created to act as the City's steward for historic preservation causes and protector of historic structures. The Board would be an advisory body to the Planning Commission and City Council. The Board would consist of five members appointed by the Mayor and confirmed by the City Council and meet monthly.

#### Scope:

Staff is recommending Council consider limiting the initial historic district to the original one square mile of the City of Clovis, bounded by Barstow Avenue to the south, Sunnyside Avenue to the east, Sierra Avenue to the north, and Minnewawa Avenue to the west (this area represents the original one square mile that was incorporated in 1912). Staff is further recommending Council consider initially limiting consideration of historic sites to non-residential properties.

#### Initial Role:

The Board would be primarily responsible for developing a list of Historic Landmarks within the Historic District for Planning Commission and City Council to consider for designation.

#### Ongoing Role:

The Board would periodically update the Historic Landmarks within the Historic District and reviewing building/planning actions related to historically designated structures. Review of proposals for the exterior alteration of historically designated sites and structures would likely be the most frequent task undertaken by the Board. The Board reviews would be conducted with a focus on preserving the integrity of historic structures and maintaining the unified architectural character of the Historic District. The Board would also be tasked with recommending criteria to be used during such review.

#### Limitations on Changes to Designated Historic Sites:

Reviews of exterior alterations to buildings would need to occur prior to issuance of a permit. For land use actions, the Board would only review the impact of a proposed land use change on a historic landmark and would provide a recommendation to the Planning Commission. The Board would not have authority to approve or deny land use actions and would not make determinations on what uses are allowed. That power rests solely with the Planning Commission. Any action of the Board would be appealable to the City Council.

#### Expenses:

All reviews by the Board would be conducted at no expense to the applicant. Similarly, any appeals of Board actions would be processed free of charge.

Staff time to support the Board has not been budgeted for and resources would need to be identified.

Summary:

In summary, a property owner will be notified of the potential for a property to be listed on the historic register before public hearings held by the Historic Preservation Board and again by the Planning Commission. The final recommendation would be noticed to the property owner before the item is heard by the City Council when the Council could officially add the property to the local historic register. The property owner will be allowed the opportunity to state whether they want their property to be included as an historic landmark. There is a provision in the ordinance that allows the Planning Commission to consider a hardship by a property owner that would result from denial of a permit to carry out proposed work.

If a site is added to the register before altering the exterior of, or demolishing, an historic landmark or historic site, the property owner must first obtain approval either from the Director of Planning and Development Services or, depending on the significance of the change, the Board would provide a recommendation to the Planning Commission. This is appealable to City Council. In addition, for Historic Landmarks, property owners must seek permission to do work that does not require a permit and would not normally require City approval. This will increase the time it takes property owners to complete work on their property, compared to a site that is not on the historic register.

**Option C – Take no action at this time.**

Currently in the City of Clovis, historic preservation is governed by the General Plan in the Open Space and Conservation Element under *Goal 2: Natural, agricultural, and historic resources that are preserved and promoted as key features for civic pride and identity*. This is implemented by the following policies:

- Policy 2.9: National and state historic resources. Preserve historical sites and buildings of state or national significance in accordance with the Secretary of Interior Standards for Historic Rehabilitation.
- Policy 2.10: Local historic resources. Encourage property owners to maintain the historic integrity of the site by (listed in order of preference): preservation, adaptive reuse, or memorialization.
- Policy 2.11: Old Town. Prioritize the preservation of the historic character and resources of Old Town.
- Policy 2.12: Public education. Support public education efforts for residents and visitors about the unique historic, natural, and cultural resources in Clovis.

In addition, the Central Clovis Specific Plan further implemented the above goal and policies with design guidelines and language desiring to preserve the historic nature of the Old Town area.

**FISCAL IMPACT**

Implementation of the ordinance will need to be supported by staff time as well as supporting the Board and meetings. The exact cost to support the Board is unknown at this time.

**REASON FOR RECOMMENDATION**

City Council provided direction to draft an ordinance to develop an advisory body to the Planning Commission and City Council to develop an initial list of historic landmarks and historic sites within the Historic District for consideration. The Board would also be responsible for maintaining that list of historic landmarks and historic sites. Staff has provided Council with various options to consider.

**ACTIONS FOLLOWING APPROVAL**

Staff will implement Council direction.

Prepared by: Andrew Haussler, Assistant City Manager  
Renee Mathis, Director of Planning & Development Services.

Reviewed by: City Manager *AM*

### **325 Pollasky Avenue (Clovis Chamber of Commerce) Building Update**

The building owned by the Clovis Chamber of Commerce is located at 325 Pollasky Avenue. It was built in 1914 and originally served as the Clovis Library. The construction was financed through a grant from the Carnegie Foundation, which funded 2,509 such libraries between 1883 and 1929. The building remained in continuous use as a public library until 1976, when the new Clovis Library opened at 1133 Fifth Street. In exchange for the new library site, the County of Fresno deeded ownership of the building and land at 325 Pollasky to the City of Clovis.

Upon taking possession of the property, the City of Clovis was committed to renovating and converting the building into a use which could serve as a public meeting space. However, the costs for renovation ranged from \$150,000 to \$160,000.

In 1979, the City of Clovis replaced the foundation at a cost of \$70,000. By 1983, a group of citizens managed to raise \$13,000 for additional restoration work. Those funds, along with donations of labor and supplies, enabled the group to complete some additional restoration work.

In 1986, the City of Clovis entered into an agreement with the Clovis Chamber of Commerce to transfer ownership of the building and property to the Chamber. The agreement included several conditions ("Reversionary Interest Conditions"), which were to be included in the deed conveying the property to the Chamber:

- Chamber must complete remodeling of the building.
- Chamber may not convey any interest in the property without consent of the City.
- Chamber must remain as a non-profit corporation organized as a chamber of commerce.
- Chamber must maintain the upper floor of the building for public use or short-term rental for public and community groups.
- Chamber must maintain the building in good condition and repair.
- As part of the agreement, the City was also to retain the ability to take back title to the property in the event of a default by the Chamber.

Since 1986, the Chamber has continuously occupied the building. During that time, the Clovis Chamber of Commerce bore all costs for repairs and maintenance for the building and property. Some of these repairs and upgrades include total replacement of roof, total overhaul of landscaping and irrigation, and overhaul of front entry. Between 2012 and 2016, the building experienced issues which included the total failure of HVAC equipment, severe roof leak, and a water main break.

The building is also not ADA compliant, which has prevented the Chamber of Commerce from being able to legally operate inside the building.

In 2016, City of Clovis staff discovered that although the deed conveying the property from the City to the Chamber was executed in 1986, none of the Reversionary Interest Conditions required by the agreement were included in the deed. Also, the 1986 agreement was not recorded. Therefore, the legally enforceable status of the Reversionary Interest Conditions was in doubt.

In 2017, facing significant repairs to the HVAC system and building plumbing, and significant and costly upgrades to bring the building into compliance with ADA standards, the Chamber asked the City to be released from the Reversionary Interest Conditions. On September 10, 2018, the City Council approved Resolution 18-121 and released any interest the City had in the building and property, including releasing

the Chamber from all Reversionary Interest Conditions. The stated purpose in Resolution 18-121 of releasing the Chamber was "so that the Chamber may move forward with future planning for the property and building consistent with the City's Central Clovis specific plan and applicable zoning." As a result of Resolution 18-121, the City has no legal or equitable interest in the building or property, and the Chamber is not subject to any conditions restricting the use of the building or development of the property other than the Central Clovis Specific Plan and applicable zoning.

Since 2018, the Chamber of Commerce Board of Directors and staff have explored the following four options for the property:

1. Repair the building
2. Sell the property
3. Scrape and rebuild the building
4. Create a partnership with a developer who will remove the current building and construct a new building. The Chamber would enter into this partnership on the strength of the equity of land with the developer covering the cost of construction. The outcome for the Chamber would be a condominium-type office that would remain the property of the Chamber of Commerce in perpetuity.

To date, the Chamber staff has explored all options, but has not made a final decision.



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Administration  
 DATE: May 2, 2022  
 SUBJECT: Receive and File – Update on 325 Pollasky Avenue (Clovis Chamber of Commerce Building).

**Staff:** Andrew Haussler, Assistant City Manager  
**Recommendation:** Receive and File

ATTACHMENTS: 1. Background Documentation

### CONFLICT OF INTEREST

Mayor Jose Flores maintains financial interest in a property within 1,000 feet of subject property and, pursuant to law, must abstain from participation and decision regarding this item.

### RECOMMENDATION

That the City Council receive and file the update on 325 Pollasky Avenue (Clovis Chamber of Commerce Building).

### EXECUTIVE SUMMARY

Since 1986, the building located at 325 Pollasky has been occupied and maintained by the Clovis Chamber of Commerce through an agreement for conveyance of use. In 2018, City Council approved a resolution releasing all interest in the subject property. Since that time, the Clovis Chamber of Commerce has continued exploring future use of the property.

### BACKGROUND

The building owned by the Clovis Chamber of Commerce is located at 325 Pollasky Avenue. It was built in 1914 and originally served as the Clovis Library. The construction was financed through a grant from the Carnegie Foundation, which funded 2,509 such libraries between 1883 and 1929. The building remained in continuous use as a public library until 1976, when the new Clovis Library opened at 1133 Fifth Street. In exchange for the new library site, the County of Fresno deeded ownership of the building and land at 325 Pollasky to the City of Clovis.

Upon taking possession of the property, the City of Clovis was committed to renovating and converting the building into a use which could serve as a public meeting space. However, the costs for renovation ranged from \$150,000 to \$160,000.



In 1979, the City of Clovis replaced the foundation at a cost of \$70,000. By 1983, a group of citizens managed to raise \$13,000 for additional restoration work. Those funds, along with donations of labor and supplies, enabled the group to complete some additional restoration work.

In 1986, the City of Clovis entered into an agreement with the Clovis Chamber of Commerce to transfer ownership of the building and property to the Chamber. The agreement included several conditions ("Reversionary Interest Conditions"), which were to be included in the deed conveying the property to the Chamber:

- Chamber must complete remodeling of the building.
- Chamber may not convey any interest in the property without consent of the City.
- Chamber must remain as a non-profit corporation organized as a chamber of commerce.
- Chamber must maintain the upper floor of the building for public use or short-term rental for public and community groups.
- Chamber must maintain the building in good condition and repair.

As part of the agreement, the City was also to retain the ability to take back title to the property in the event of a default by the Chamber.

Since 1986, the Chamber has continuously occupied the building. During that time, the Clovis Chamber of Commerce bore all costs for repairs and maintenance for the building and property. Some of these repairs and upgrades include total replacement of roof, total overhaul of landscaping and irrigation, and overhaul of front entry. Between 2012 and 2016, the building experienced issues which included the total failure of HVAC equipment, severe roof leak, and a water main break.

The building is also not ADA compliant, which has prevented the Chamber of Commerce from being able to legally operate inside the building.

In 2016, City of Clovis staff discovered that although the deed conveying the property from the City to the Chamber was executed in 1986, none of the Reversionary Interest Conditions required by the agreement were included in the deed. Also, the 1986 agreement was not recorded. Therefore, the legally enforceable status of the Reversionary Interest Conditions was in doubt.

In 2017, facing significant repairs to the HVAC system and building plumbing, and significant and costly upgrades to bring the building into compliance with ADA standards, the Chamber asked the City to be released from the Reversionary Interest Conditions. On September 10, 2018, the City Council approved Resolution 18-121 and released any interest the City had in the building and property, including releasing the Chamber from all Reversionary Interest Conditions. The stated purpose in Resolution 18-121 of releasing the Chamber was "so that the Chamber may move forward with future planning for the property and building consistent with the City's Central Clovis Specific Plan and applicable zoning." As a result of Resolution 18-121, the City has no legal or equitable interest in the building or property, and the Chamber is not subject to any conditions restricting the use of the building or development of the property other than the Central Clovis Specific Plan and applicable zoning.

Since 2018, the Chamber of Commerce Board of Directors and staff have explored options for the future of this building and property but have not made a final decision. Likewise, the City of Clovis has not been in receipt of any plans or applications for demolition, improvements, or redevelopment.

The City of Clovis has no legal interest in the subject property.

**FISCAL IMPACT**

The City of Clovis has no financial interest in the subject property.

**REASON FOR RECOMMENDATION**

The attached report serves as information only. Beyond the review of information by Council, no action is requested.

**ACTIONS FOLLOWING APPROVAL**

Staff will file information.

Prepared by: Shawn Miller, Business Development Manager

Reviewed by: City Manager *SM*

SAVE OUR 1914 CARNEGIE LIBRARY COMMITTEE

c/o Clovis-Big Dry Creek Historical Society

401 Pollasky Avenue  
Clovis, CA 93612-1141

AGENDA ITEM NO. 14.

AGENDA ITEM NO. 18.

May 16, 2022

Mr. John Holt  
City Manager  
City of Clovis  
1033 Fifth Street  
Clovis, CA 93612

Dear Mr. Holt,

Two years ago the Clovis-Big Dry Creek Historical Society formed a committee to advocate for the preservation of the Carnegie Library building in Old Town Clovis, listed among the Fresno County Historical Landmarks and Records Advisory Commission's Inventory of Historic Sites in Fresno County.

We believe that Old Town Clovis should continue to be defined by its authentic historical buildings wherever feasible. The campaign to protect the Carnegie Library building has accentuated the absence of a City of Clovis Historic Preservation Commission to review projects and plans that may affect the City's historic and cultural heritage. Typically such commissions encourage public participation.

We believe that prompt action by the City to establish a Historic Preservation Commission will:

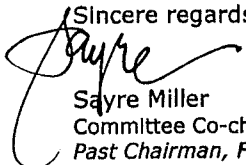
- discourage demolition of our cultural history
- take a vital step toward applying to be a state Certified Local Government to expedite environmental reviews and create opportunities for grant funding
- promote conservation of resources and reduce waste and expense by repairing and reusing existing buildings, greatly reducing their carbon footprint
- encourage identification of significant buildings to educate the public about local history
- contribute expertise in period architecture to maintain the authenticity of Old Town and other historical sites, and
- generate enthusiasm for Clovis' unique character, both as a destination and for the benefit of local citizens.

Many municipalities maintain a Local Register of Historic Resources. Such resources are researched and evaluated as to their significance, and often are marked by plaques or other insignia to illuminate a town's historical development. We believe that Clovis is worthy of such a project.

The Council gave verbal direction to staff at the City Council meeting on May 2, 2020, to initiate the formation of a Historic Preservation Commission. Our citizen group endorses this action with enthusiasm. In addition to the committee—comprised of seven Clovis citizens who are passionate about the preservation of historically significant landmarks—we have consulted an advisory group comprised of John Wright, former City of Clovis Planning Director; Elizabeth Laval, President, Fresno County Historical Society; Karana Hattersley-Drayton, former City of Fresno Historic Preservation Project Manager; and Chris Johnson, AIA, Principal and Project Lead for the 2005 restoration of Fresno's Santa Fe Depot. We offer our services to aid the City in the establishment of a Clovis Historic Preservation Commission.

If you would like to discuss this issue, please contact me by phone at (559) 930-3619, or by email at sayremcfarlanemiller@gmail.com.

Sincere regards,



Sayre Miller  
Committee Co-chair  
Past Chairman, Fresno County Historical Society

Peg Bos, Committee Co-chair  
Past President, Clovis-Big Dry Creek Historical Society

Paul Halajian  
Architect, Old Town Clovis

Tom Wright  
Board Chairman, Clovis Veterans Memorial District

Carol Smittcamp Copeland  
Business Owner, Old Town Clovis

Don Bremseth  
Architect / 1979-85 Carnegie Library  
Restoration Committee Member

Betsy Smittcamp Kimball  
President, Smittcamp Family Foundation

ATTACHMENT 3



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: June 6, 2022

SUBJECT: Consider – A request from Clovis-Big Dry Creek Historical Society for the City Council to Create a Historical Preservation Commission.

**Staff:** Andrew Haussler, Assistant City Manager  
**Recommendation:** Consider request and provide direction.

ATTACHMENTS: 1. Letter from Clovis-Big Dry Creek Historical Society

### CONFLICT OF INTEREST

None.

### RECOMMENDATION

For the City Council to provide direction to staff based on the request from the Clovis-Big Dry Creek Historical Society to form a Historical Preservation Commission.

### EXECUTIVE SUMMARY

Staff is in receipt of a request (attached) to the City Manager from the Clovis-Big Dry Creek Historical Society to form a historical preservation commission.

### BACKGROUND

After the discussion regarding the status of the Clovis Carnegie Library Building on May 2, 2022, the Clovis-Big Dry Creek Historical Society submitted a letter on May 16, 2022, to the City Manager requesting that the City form a Historical Preservation Commission. The City currently does not have a Historical Preservation Commission. The letter from the Clovis-Big Dry Creek Historical Society refers to the Council giving verbal direction to staff at the May 2nd Council meeting to initiate the formation of a Historical Preservation Commission. However, no action was taken at that meeting. Staff now seeks Council's direction on the potential formation of such a Commission.

When the Zoning Code was updated in 2014, a definition for "Historical Preservation Board" was included in Chapter 9.120, and defined to be a *City review board designated to promote the cultural, economic, educational, and general welfare of the City through the preservation and*

*protection of buildings, sites, structures, areas, and districts of historic significance and interest.* Although a definition for the Board was included, no other provisions in the Zoning Code address a Historic Preservation Board or require its creation, *and* the City has not taken action to establish such a Board. To establish a Historic Preservation Commission (or Board) the City Council would need to initiate and approve an amendment to the Zoning Code to incorporate such a Board into the development review process for designated buildings and sites.

The role of a Historic Preservation Commission can vary as determined by the City Council. Many similar commissions in other cities review historic resources such as buildings, sites, structures, areas, and districts of historic significance and interest, and determine what should be recommended as designated for protection, subject to City Council approval. A commission may also serve as an additional reviewing/advisory body, reviewing and making recommendations on a designated site application to the Planning Commission. If an owner of one of those designated buildings, sites, structures, areas, and districts of historic significance and interest wants to make improvements and/or changes the Historic Preservation Commission would review and determine if the request is appropriate and then recommend approval or denial of the application to the Director, Planning Commission, and City Council, depending on the entitlement. While this would add a layer of protection to designated historic resources it may also deter investment as it could increase approval timeframes and potentially increase expenses to make improvements.

It is likely amendments and/or additions to the City's General Plan would also be required for the Historic Preservation Commission to determine standards to apply. Currently in the City of Clovis, historic preservation is governed by the General Plan in the Open Space and Conservation Element under *Goal 2: Natural, agricultural, and historic resources that are preserved and promoted as key features for civic pride and identity.* This is implemented by the following policies:

- Policy 2.9: National and state historic resources. Preserve historical sites and buildings of state or national significance in accordance with the Secretary of Interior Standards for Historic Rehabilitation.
- Policy 2.10: Local historic resources. Encourage property owners to maintain the historic integrity of the site by (listed in order of preference): preservation, adaptive reuse, or memorialization.
- Policy 2.11: Old Town. Prioritize the preservation of the historic character and resources of Old Town.
- Policy 2.12: Public education. Support public education efforts for residents and visitors about the unique historic, natural, and cultural resources in Clovis.

In addition, the Central Clovis Specific Plan further implemented the above goal and policies with design guidelines and language desiring to preserve the historic nature of the Old Town area.

Staff is currently seeking direction from Council regarding a request to establish a Historic Preservation Commission. Below are some options for Council to consider:

- 1) Keep status quo as currently determined in the General Plan as provided above.
- 2) Direct staff to review historic preservation in the General Plan Update currently underway to determine any new goals, policies, and implementation steps such as establishing a Historical Preservation Commission.
- 3) Direct staff to bring back the necessary items for Council to consider establishing a Historical Preservation Commission before completing the General Plan Update.

#### **FISCAL IMPACT**

At this point in the discussion there is no fiscal impact.

#### **REASON FOR RECOMMENDATION**

Staff is in receipt of a request to the City Manager from the Clovis-Big Dry Creek Historical Society to form a historical preservation commission.

#### **ACTIONS FOLLOWING APPROVAL**

Staff will implement Council direction.

Prepared by: Andrew Haussler, Assistant City Manager

Reviewed by: City Manager *JH*

## SUMMARY OF DRAFT ORDINANCE

1. The Historic Preservation Board (“Board”) will consist of five (5) members.
2. Each member shall be:
  - a. Appointed by the City Council, following recommendation by the Mayor; and
  - b. A resident of the City; and
  - c. Appointed to a four (4) year term. For the initial appointment, three (3) members will be appointed for a four-year term and the remaining two (2) members will be appointed to a two-year term.
3. The Council and Mayor may consider appointing members from, but not limited to, such professions, disciplines, and interests as: licensed architects and structural engineers; urban planners and landscape architects; attorneys and real estate experts; members of community groups and residents within historic districts, occupants of historic landmarks, and owners of historic sites.
4. The Board will meet at least once per month.
5. The Board will be an advisory body to the Planning Commission and City Council.
6. “Historic District” means the original one square mile of the City of Clovis, bounded by Barstow Avenue to the south, Sunnyside Avenue to the east, Sierra Avenue to the north, and Minnewawa Avenue to the west.
7. “Historic Landmark” means any non-residential improvement in the Historic District.
8. The Board would:
  - a. Develop and recommend an initial list of historic landmarks and historic sites within the Historic District for the Planning Commission and City Council to consider.
  - b. Establish criteria for, conduct and keep current a register of historic resources within the boundaries of the City subject to approval by the City Council.
  - c. Recommend to the Planning Commission and City Council guidelines for the designation of historic landmarks and historic sites.

9. Historic landmarks and historic sites will be established in the following manner:
  - a. The Board may request the designation of an improvement as a historic landmark or the designation of a historic site or historic district, on its own accord, or based on testimony by members of the public.
  - b. The Board will conduct a study of the proposed designation and make a recommendation to the Planning Commission.
  - c. The Planning Commission will conduct a hearing to consider and make a recommendation of City Council.
  - d. The City Council will consider the Planning Commission request and approve by resolution or deny. If approved, it will be added to the register of historic designations.
  - e. Annually, the Historic Preservation Board shall review the register of historic designations and present it to the Council, along with any recommended changes.
10. Before altering the exterior of, or demolishing, a historic landmark or historic site, the property owner must first obtain approval as follows:
  - a. For work that would not normally require a permit (i.e., exterior building paint color), the Director of Planning and Development Services shall approve an application if it complies with the Central Clovis Design Standards.
  - b. If a building permit is required and seeks to make minor alterations or repairs, the Director of Planning and Development Services shall approve if it complies with the Central Clovis Design Standards.
  - c. If an application is to tear down, demolish, construct, alter, remove, or relocate a historic landmark, the Planning Commission will hold a noticed public hearing and approve or disapprove the application. Such decision is appealable to the Council.
  - d. City approval is not required for ordinary maintenance and repairs.



ORDINANCE 22-\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS ADDING  
CHAPTER 9.81 OF TITLE 9 OF THE CLOVIS MUNICIPAL CODE CREATING A  
HISTORIC PRESERVATION BOARD**

The City Council of the City of Clovis does ordain as follows:

Section 1. Chapter 9.81 of Title 9 of the Clovis Municipal Code is hereby added to read as follows:

**Chapter 9.81**

**HISTORIC PRESERVATION BOARD**

Sections:

- 9.81.01 Purpose and Findings.
- 9.81.02 Definitions.
- 9.81.03 Creation of Historic Preservation Board.
- 9.81.04 Powers and Duties of Historic Preservation Board.
- 9.81.05 Historic Designation Criteria.
- 9.81.06 Historic Designation Procedures.
- 9.81.07 Permit Required.
- 9.81.08 Permit Approval Procedure.
- 9.81.09 Permit Approval Criteria.
- 9.81.10 Appeals.
- 9.81.11 Ordinary Maintenance and Repair.
- 9.81.12 Unsafe or Dangerous Conditions.
- 9.81.13 Duty to Keep in Good Repair.
- 9.81.14 Showing of Hardship.
- 9.81.15 No Retroactive Application.
- 9.81.16 Failure to Act

**9.81.01 Purpose and Findings.**

The purpose of this Chapter is to promote the cultural, economic, educational, and general welfare of the City through the preservation and protection of buildings, sites, structures, areas, and districts of historic significance and interest.

**9.81.02 Definitions.**

- A. "Alteration" means any exterior change or modification, of any historic resource including, but not limited to, exterior changes to or modifications of structure, architectural details, or visual characteristics such as paint color and surface texture, grading, surface paving, new structures, cutting or removal of trees and other natural features, disturbance of archaeological sites or areas, and the

placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, paintings and landscape accessories affecting the exterior visual qualities of the property.

- B. "Historic District" means the original one square mile of the City of Clovis, bounded by Barstow Avenue to the south, Sunnyside Avenue to the east, Sierra Avenue to the north, and Minnewawa Avenue to the west.
- C. "Historic Landmark" means any non-residential improvement in the historic district that has special historic, cultural, aesthetic, or architectural character, interest, or value as part of the development, heritage, or history of the City, the State, or the nation, and that has been designated pursuant to this Chapter.
- D. "Historic Resource" means non-residential improvements, buildings, structures, signs, features, sites, places, areas, or other objects of historic aesthetic, educational, cultural, or architectural significance to the citizens of the City, within the historic district, which may or may not have been officially designated as "historic landmarks" or "historic sites" as hereinafter defined.
- E. "Historic Site" means a parcel or part thereof, within the historic district, on which a historic resource is situated and any abutting parcel or part thereof constituting part of the premises on which the historic resource is situated, and which has been designated a historic site pursuant to this Chapter.
- F. "Improvement" means any building, structure, place, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.
- G. "Preservation" means the identification, study, protection, restoration, rehabilitation, or enhancement of historic resources.

#### **9.81.03 Creation of Historic Preservation Board.**

- A. Establishment. In order to execute the purposes declared in this Chapter, there is created a Historic Preservation Board.
- B. Appointment.
  - 1. The Historic Preservation Board shall consist of five (5) members.
  - 2. Each member shall be:
    - a. Appointed by the City Council, following recommendation by the Mayor;  
and

- b. A resident of the City; and
  - c. Appointed to a four (4) year term. For the initial appointment, three (3) members will be appointed for a four-year term and the remaining two (2) members will be appointed to a two-year term.
3. The Council and Mayor may consider appointing members from, but not limited to, such professions, disciplines, and interests as: licensed architects and structural engineers; urban planners and landscape architects; attorneys and real estate experts; members of community groups and residents within historic districts, occupants of historic landmarks, and owners of historic sites.
- C. Meetings. The Historic Preservation Board shall hold regular meetings at least once per month.

**9.81.04 Powers and Duties of Historic Preservation Board.**

The Historic Preservation Board shall have the following powers and duties:

- A. The Historic Preservation Board will be an advisory body to the Planning Commission and City Council.
- B. The Historic Preservation Board will develop and recommend an initial list of historic landmarks and historic sites within the Historic District for the Planning Commission and City Council to consider.
- C. Establish criteria for, conduct and keep current a register of historic resources within the boundaries of the City subject to approval by the City Council.
- D. Recommend to the Planning Commission and City Council guidelines for the designation of historic landmarks and historic sites subject to the provisions of Section 9.81.05 of this Chapter.
- E. Review and comment upon the conduct of land use, housing and redevelopment, municipal improvements and other types of planning and programs undertaken by any other agency of the City, the County or State as they relate to the historic resources of the community as requested by City Council.
- F. Recommend standards to be considered by the City Council to be used by the Director of Planning and Development Services, Historic Preservation Board, and the Planning Commission in reviewing applications for permits to construct, change, alter, modify, remodel, remove or significantly affect any historic resource. Such standards shall include the Standards for Rehabilitation adopted by the United States Secretary of the Interior, as set forth in 36 Code of Federal Regulations part 1208, as said part may from time to time be amended.

- G. Investigate and report to the City Council on the use of various Federal, State, local or private funding sources and mechanisms available to promote historic preservation in the City.
- H. Recommend approval or disapproval, in whole or in part, applications for permits pursuant to this Chapter.
- I. Render advice and guidance, upon the request of the owner or occupant of the property affected, on the restoration, alteration, decoration, landscaping, or maintenance of any historic resource, including a landmark, landmark site, , or property in the vicinity of the foregoing within public view thereof.
- J. Participate in, promote, and conduct public information, educational and interpretive programs pertaining to historic resources.
- K. Review and make recommendations to the City Council regarding applications for and the administration of historic property contracts submitted or entered into pursuant to Government Code sections 50280 through 50290.
- L. Perform such other duties and exercise such other powers as may be specified by the City Council.

**9.81.05 Historic Designation Criteria.**

- A. For the purposes of this Chapter, an improvement may be designated an historic landmark or historic site by the City Council pursuant to Section 9.81.06 of this Chapter if it meets the following criteria:
  - 1. It exemplifies or reflects special elements of the City's cultural, aesthetic, or architectural history; or
  - 2. It is identified with persons or events significant in local, State, or national history; or
  - 3. It embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship; or
  - 4. It is representative of the notable work of a builder, designer, or architect.

**9.81.06 Historic Designation Procedures.**

Historic landmarks and historic sites shall be established by the City Council in the following manner:

- A. The Historic Preservation Board may request the designation of an improvement as an historic landmark or the designation of an historic site or historic district, on its own accord, or based on testimony by members of the public.

- B. The Historic Preservation Board shall conduct a study of the proposed designation and, based on such documentation as it may require, make a written recommendation to the Planning Commission as to the appropriateness of the designation.
- C. Upon receipt of the written recommendation of the Historic Preservation Board, the Planning Commission shall schedule a public hearing.
- D. The Director of Planning and Development Services shall give notice of the date, place, time and purpose of the hearing, and the recommendation of the Historic Preservation Board by first class mail to all applicants, owners, and occupants of the improvement at least twenty (20) days prior to the date set for the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls, if they are otherwise not known. Notice of the hearing shall also be advertised once in the newspaper.
- E. The Planning Commission shall conduct a public hearing and shall provide a reasonable opportunity for all interested parties to express their opinions.
- F. At the conclusion of the public hearing, but in no event more than thirty (30) days from the date set for the initial public hearing or any continuance thereof for the designation of a proposed historic landmark or historic site, the Planning Commission shall recommend, in writing, approval in whole or in part, or disapproval in whole or in part, of the application. Such written determination shall contain a description of the actual property or properties to be designated and shall be filed with the City Council, the City Clerk, and the Building Official. The City Clerk shall mail notice of such decision to the applicants and the owners and occupants of the proposed designated historic site or historic landmark. Notice shall also be mailed to any other interested parties as may request a copy thereof.
- G. The City Council, within thirty (30) days of receipt of the recommendations from the Planning Commission, or as soon thereafter as possible, shall by resolution approve the application in whole or in part, or shall by motion disapprove it in its entirety. The City Council shall hold a public hearing on such proposed resolution. Notice of the time and date set for the public hearing on such proposed resolution shall be mailed to all applicants and the owners and occupants of the proposed designated historic site or historic landmark. The Council, in its public hearing on the proposed resolution, shall provide a reasonable opportunity for all interested persons to express their opinions.
- H. The City Clerk shall notify the Building Official of any official designation adopted by resolution by the City Council. The Clerk shall also file within ninety (90) days of such designation with the County Recorder a certified copy of the resolution which shall include the name of the current property owner, the designating entity, the specific historic resources designation and a legal description of the property, together with a notice briefly stating the fact of said designation and a summary of the effects said designation will have. The Clerk further shall mail a copy of the

resolution approving said designation or a copy of the minute order showing disapproval of said designation, to all applicants and the owners and occupants of the proposed designated historic site or historic landmark, and to any other person who requests a copy.

- I. Failure to send any notice by mail to any property owner where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed designation. The Planning Commission and Council may also give such other notice as they may deem desirable and practicable.
- J. While an application for designation of an improvement as an historic landmark or the designation of an historic site is pending, no building, alteration, demolition, or removal permits for any proposed historic site or historic landmark shall be issued. Exceptions may be considered in case of hardship as defined in Section 9.81.14 of this Chapter.
- K. Annually, the Historic Preservation Board shall review the register of historic designations and present it to the Council, along with any recommended changes.

#### **9.81.07 Permit Required.**

It is unlawful for any person to tear down, demolish, construct, alter, remove or relocate any improvement, or any portion thereof, which has been designated an historic landmark or historic site pursuant to the provisions of this Chapter, or to alter in any manner any exterior architectural feature of such an historic landmark or historic site, or to place, erect, alter, or relocate any sign on an historic landmark or historic site, without first obtaining written approval to do so in the manner provided in this Chapter from the Director of Planning and Development Services.

#### **9.81.08 Permit Approval Procedure.**

The following procedures shall be followed in processing applications for approval of work covered by this Chapter:

- A. The Building Official shall report any application for a demolition permit or a building permit to work on a designated historic site or historic landmark to the Director of Planning and Development Services. If the permit seeks to demolish or significantly alter or reconstruct the historic site or historic landmark, the Director of Planning and Development Services shall refer such application to the Historic Preservation Board for its review and recommendation. The Historic Preservation Board shall review the application and shall submit its written recommendation to the Planning Commission within sixty (60) days after receipt of the application from the Director of Planning and Development Services. In connection with its review, the Historic Preservation Board may hold hearings and may require any documentation it believes reasonably necessary to make its recommendation. The Historic Preservation Board shall make all recommendations in accordance with the prescriptive standards adopted pursuant to Section 9.81.05 and 9.81.04 F.

- B. If the permit seeks to make minor alterations or repairs, the Director of Planning and Development Services shall review the permit and, if the proposed work complies with the Central Clovis Design Standards, as may be amended, approve the permit. Minor alterations are those alterations which the Director of Planning and Development Services or his/her designee determines will not adversely affect the exterior architectural characteristics nor the historical or aesthetic value of the historic structure, its site, or surroundings.
- C. If no building permit would otherwise be required pursuant to the City Code, application for approval to pursue work on a designated historic site or historic landmark shall be made to the Director of Planning and Development Services. If the proposed work is in compliance with the Central Clovis Design Standards, as may be amended, the Director of Planning and Development Services shall approve the application.
- D. All applications shall be accompanied by plans and specifications describing the proposed work as well as any other material considered by the Director of Planning and Development Services, Historic Preservation Board, or the Planning Commission to be reasonably necessary for the proper review of the proposed project.
- E. Whenever the application is to tear down, demolish, construct, alter, remove, or relocate any improvement, or any portion thereof, which has been designated a historic landmark or historic site pursuant to the provisions of this Chapter, the Planning Commission shall hold a public hearing thereon. The Planning Commission may hold public hearings on other applications as they deem necessary.

The hearing shall be held at the next available regularly scheduled Planning Commission meeting after receipt of the Historic Preservation Board's recommendation, and after proper notice has been given of such hearing. Notice of such hearing shall be given by first class mail to each applicant at least ten (10) days prior to the date set for such hearing. Notice of the hearing shall also be advertised once in the newspaper not less than five (5) calendar days prior to said hearing. Any hearing may be continued from time to time by the Planning Commission.

- F. At the close of the hearing, the Planning Commission shall approve or disapprove, in whole or in part, such application in accordance with the standards adopted pursuant to Section 9.81.05 and 9.81.04 F, considering the recommendations of the Historic Preservation Board. The Planning Commission's decision shall be in writing and shall state the findings of fact relied upon in reaching such decision. Such decision may be appealed to the City Council.

**9.81.09 Permit Approval Criteria.**

The Director of Planning and Development Services, Planning Commission, or the City Council upon appeal, shall issue an approval for any proposed work as described in Section 9.81.08 based upon the following criteria or other criteria as determined by the Planning Commission pursuant to Section 9.81.05:

- A. In the case of any property designated a historic landmark, the proposed work would not detrimentally alter, destroy, or adversely affect any exterior architectural feature; or
- B. In the case of construction of a new improvement, building, or structure upon a historic site, the exterior of such improvements will not adversely affect and will be compatible with the external appearance of existing designated improvements, buildings, and structures on said site.

**9.81.10 Appeals.**

Any interested party may appeal any decision of the Planning Commission pursuant to Section 9.81.09 to the City Council by filing an appeal within fifteen (15) days after the date of the notice of the Planning Commission's decision in accordance with the procedures and requirements set forth in Chapter 9.90 of the Municipal Code.

**9.81.11 Ordinary Maintenance and Repair.**

Nothing in this Chapter shall be construed to prevent any reasonable uses of any property or properties covered by this Chapter that are not in conflict with the purposes of this Chapter, including the ordinary maintenance or repair of said property that does not involve a change in design, material, or external appearance thereof.

**9.81.12 Unsafe or Dangerous Conditions.**

Nothing in this Chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct the unsafe or dangerous condition of any structure, or feature or part thereof, covered by this Chapter, where such condition has been declared unsafe or dangerous by the Building Official or the Fire Marshal, and where the proposed measures have been declared necessary by such officials to correct such condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed. In making a determination as to whether such work is reasonably necessary as aforesaid, the above-mentioned officials may refer to, and be guided by, the State Historical Building Code (H&S Code section 18950 et seq.) as the same may from time to time be amended, revised, or replaced.

**9.81.13 Duty to Keep in Good Repair.**

The owner, occupant, or other person in actual charge of a historic resource shall keep in good repair all of the exterior portions of such improvement, building or structure. It shall be the duty of the Building Official to enforce this Section.



**9.81.14 Showing of Hardship.**

The Planning Commission need not disapprove an application for a permit to carry out any proposed work on a historic landmark or a historic site, if the applicant presents clear and convincing evidence of facts demonstrating to the satisfaction of the Planning Commission that such disapproval will cause immediate and substantial hardship on the applicant because of conditions peculiar to the person seeking to carry out the proposed work, whether this be the property owner, tenant, or resident, or because of conditions peculiar to the particular improvement, building, or structure or other feature involved, and that failure to disapprove the application will be consistent with the purposes of this Chapter. In determining whether extreme hardship exists, the Planning Commission shall consider, among others, the following criteria:

- A. Whether denial of the applicant will diminish the value of the subject property so as to leave substantially no value.
- B. Whether reasonable utilization of the property is prohibited or impractical.

If a hardship is found to exist under this Section, the Planning Commission shall make a written finding to that effect and shall specify the facts and reasons relied upon in making such finding. Such finding may be appealed to the City Council pursuant to the provisions of Section 9.81.10.

**9.81.15 No Retroactive Application.**

The provisions of this Chapter shall be inapplicable to the construction, alteration, demolition or removal of any structure or other feature on a designated historic landmark or historic site, where a permit for the performance of such work was issued prior to initiation of proceedings for such designation, and where such permit has not expired or been cancelled or revoked, provided that construction is started and diligently prosecuted to completion in accordance with the City Building Code.

**9.81.16 Failure to Act.**

If for any reason, the Historic Preservation Board fails to take action within the timelines provided in this Chapter, the matter shall automatically proceed to the Planning Commission for consideration and action.

Section 2. This Ordinance shall go into effect and be in full force from and after thirty (30) days after its final passage and adoption.

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

\* \* \* \* \*

The foregoing Ordinance was introduced and read at a regular meeting of the City Council held on this \_\_\_ day of \_\_\_\_\_ 2022, and was adopted at a regular meeting of said Council held on this \_\_\_ day of \_\_\_\_\_, 2022, by the following vote, to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Dated:

\_\_\_\_\_  
City Clerk

DRAFT

## SUMMARY OF DRAFT ORDINANCE

1. The Historic Preservation Board (“Board”) will consist of five (5) members.
2. Each member shall be:
  - a. Appointed by the City Council, following recommendation by the Mayor; and
  - b. A resident of the City; and
  - c. Appointed to a four (4) year term. For the initial appointment, three (3) members will be appointed for a four-year term and the remaining two (2) members will be appointed to a two-year term.
3. The Council and Mayor may consider appointing members from, but not limited to, such professions, disciplines, and interests as: licensed architects and structural engineers; urban planners and landscape architects; attorneys and real estate experts; members of community groups and residents within historic districts, occupants of historic landmarks, and owners of historic sites.
4. The Board will meet at least once per month.
5. The Board will be an advisory body to the Planning Commission and City Council.
6. “Historic District” means the original one square mile of the City of Clovis, bounded by Barstow Avenue to the south, Sunnyside Avenue to the east, Sierra Avenue to the north, and Minnewawa Avenue to the west.
7. “Historic Landmark” means any non-residential improvement in the Historic District.
8. The Board would:
  - a. Develop and recommend an initial list of historic landmarks and historic sites within the Historic District for the Planning Commission and City Council to consider.
  - b. Establish criteria for, conduct and keep current a register of historic resources within the boundaries of the City subject to approval by the City Council.
  - c. Recommend to the Planning Commission and City Council guidelines for the designation of historic landmarks and historic sites.

9. Historic landmarks and historic sites will be established in the following manner:
  - a. The Board may request the designation of an improvement as a historic landmark or the designation of a historic site or historic district, on its own accord, or based on testimony by members of the public.
  - b. The Board will conduct a study of the proposed designation and make a recommendation to the Planning Commission.
  - c. The Planning Commission will conduct a hearing to consider and make a recommendation of City Council.
  - d. The City Council will consider the Planning Commission request and approve by resolution or deny. If approved, it will be added to the register of historic designations.
  - e. Annually, the Historic Preservation Board shall review the register of historic designations and present it to the Council, along with any recommended changes.
10. Before altering the exterior of, or demolishing, a historic landmark or historic site, the property owner must first obtain approval as follows:
  - a. For work that would not normally require a permit (i.e., exterior building paint color), the Director of Planning and Development Services shall approve an application if it complies with the Central Clovis Design Standards.
  - b. If a building permit is required and seeks to make minor alterations or repairs, the Director of Planning and Development Services shall approve if it complies with the Central Clovis Design Standards.
  - c. If an application is to tear down, demolish, construct, alter, remove, or relocate a historic landmark, the Planning Commission will hold a noticed public hearing and approve or disapprove the application. Such decision is appealable to the Council.
  - d. City approval is not required for ordinary maintenance and repairs.

**ORDINANCE 22-\_\_****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS ADDING  
CHAPTER 9.81 OF TITLE 9 OF THE CLOVIS MUNICIPAL CODE CREATING A  
HISTORIC PRESERVATION BOARD**

The City Council of the City of Clovis does ordain as follows:

Section 1. Chapter 9.81 of Title 9 of the Clovis Municipal Code is hereby added to read as follows:

**Chapter 9.81****HISTORIC PRESERVATION BOARD**

Sections:

- 9.81.01 Purpose and Findings.
- 9.81.02 Definitions.
- 9.81.03 Creation of Historic Preservation Board.
- 9.81.04 Powers and Duties of Historic Preservation Board.
- 9.81.05 Historic Designation Criteria.
- 9.81.06 Historic Designation Procedures.
- 9.81.07 Permit Required.
- 9.81.08 Permit Approval Procedure.
- 9.81.09 Permit Approval Criteria.
- 9.81.10 Appeals.
- 9.81.11 Ordinary Maintenance and Repair.
- 9.81.12 Unsafe or Dangerous Conditions.
- 9.81.13 Duty to Keep in Good Repair.
- 9.81.14 Showing of Hardship.
- 9.81.15 No Retroactive Application.
- 9.81.16 Failure to Act

**9.81.01 Purpose and Findings.**

The purpose of this Chapter is to promote the cultural, economic, educational, and general welfare of the City through the preservation and protection of buildings, sites, structures, areas, and districts of historic significance and interest.

**9.81.02 Definitions.**

- A. "Alteration" means any exterior change or modification, of any historic resource including, but not limited to, exterior changes to or modifications of structure, architectural details, or visual characteristics such as paint color and surface texture, grading, surface paving, new structures, cutting or removal of trees and other natural features, disturbance of archaeological sites or areas, and the

placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, paintings and landscape accessories affecting the exterior visual qualities of the property.

- B. "Historic District" means the original one square mile of the City of Clovis, bounded by Barstow Avenue to the south, Sunnyside Avenue to the east, Sierra Avenue to the north, and Minnewawa Avenue to the west.
- C. "Historic Landmark" means any non-residential improvement in the historic district that has special historic, cultural, aesthetic, or architectural character, interest, or value as part of the development, heritage, or history of the City, the State, or the nation, and that has been designated pursuant to this Chapter.
- D. "Historic Resource" means non-residential improvements, buildings, structures, signs, features, sites, places, areas, or other objects of historic aesthetic, educational, cultural, or architectural significance to the citizens of the City, within the historic district, which may or may not have been officially designated as "historic landmarks" or "historic sites" as hereinafter defined.
- E. "Historic Site" means a parcel or part thereof, within the historic district, on which a historic resource is situated and any abutting parcel or part thereof constituting part of the premises on which the historic resource is situated, and which has been designated a historic site pursuant to this Chapter.
- F. "Improvement" means any building, structure, place, parking facility, fence, gate, wall, work of art or other object constituting a physical betterment of real property, or any part of such betterment.
- G. "Preservation" means the identification, study, protection, restoration, rehabilitation, or enhancement of historic resources.

#### **9.81.03 Creation of Historic Preservation Board.**

- A. Establishment. In order to execute the purposes declared in this Chapter, there is created a Historic Preservation Board.
- B. Appointment.
  1. The Historic Preservation Board shall consist of five (5) members.
  2. Each member shall be:
    - a. Appointed by the City Council, following recommendation by the Mayor; and

- b. A resident of the City; and
  - c. Appointed to a four (4) year term. For the initial appointment, three (3) members will be appointed for a four-year term and the remaining two (2) members will be appointed to a two-year term.
3. The Council and Mayor may consider appointing members from, but not limited to, such professions, disciplines, and interests as: licensed architects and structural engineers; urban planners and landscape architects; attorneys and real estate experts; members of community groups and residents within historic districts, occupants of historic landmarks, and owners of historic sites.
- C. Meetings. The Historic Preservation Board shall hold regular meetings at least once per month.

#### **9.81.04 Powers and Duties of Historic Preservation Board.**

The Historic Preservation Board shall have the following powers and duties:

- A. The Historic Preservation Board will be an advisory body to the Planning Commission and City Council.
- B. The Historic Preservation Board will develop and recommend an initial list of historic landmarks and historic sites within the Historic District for the Planning Commission and City Council to consider.
- C. Establish criteria for, conduct and keep current a register of historic resources within the boundaries of the City subject to approval by the City Council.
- D. Recommend to the Planning Commission and City Council guidelines for the designation of historic landmarks and historic sites subject to the provisions of Section 9.81.05 of this Chapter.
- E. Review and comment upon the conduct of land use, housing and redevelopment, municipal improvements and other types of planning and programs undertaken by any other agency of the City, the County or State as they relate to the historic resources of the community as requested by City Council.
- F. Recommend standards to be considered by the City Council to be used by the Director of Planning and Development Services, Historic Preservation Board, and the Planning Commission in reviewing applications for permits to construct, change, alter, modify, remodel, remove or significantly affect any historic resource. Such standards shall include the Standards for Rehabilitation adopted by the United States Secretary of the Interior, as set forth in 36 Code of Federal Regulations part 1208, as said part may from time to time be amended.

- G. Investigate and report to the City Council on the use of various Federal, State, local or private funding sources and mechanisms available to promote historic preservation in the City.
- H. Recommend approval or disapproval, in whole or in part, applications for permits pursuant to this Chapter.
- I. Render advice and guidance, upon the request of the owner or occupant of the property affected, on the restoration, alteration, decoration, landscaping, or maintenance of any historic resource, including a landmark, landmark site, , or property in the vicinity of the foregoing within public view thereof.
- J. Participate in, promote, and conduct public information, educational and interpretive programs pertaining to historic resources.
- K. Review and make recommendations to the City Council regarding applications for and the administration of historic property contracts submitted or entered into pursuant to Government Code sections 50280 through 50290.
- L. Perform such other duties and exercise such other powers as may be specified by the City Council.

#### **9.81.05 Historic Designation Criteria.**

- A. For the purposes of this Chapter, an improvement may be designated an historic landmark or historic site by the City Council pursuant to Section 9.81.06 of this Chapter if it meets the following criteria:
  1. It exemplifies or reflects special elements of the City's cultural, aesthetic, or architectural history; or
  2. It is identified with persons or events significant in local, State, or national history; or
  3. It embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship; or
  4. It is representative of the notable work of a builder, designer, or architect.

#### **9.81.06 Historic Designation Procedures.**

Historic landmarks and historic sites shall be established by the City Council in the following manner:

- A. The Historic Preservation Board may request the designation of an improvement as an historic landmark or the designation of an historic site or historic district, on its own accord, or based on testimony by members of the public.



- B. The Historic Preservation Board shall conduct a study of the proposed designation and, based on such documentation as it may require, make a written recommendation to the Planning Commission as to the appropriateness of the designation.
- C. Upon receipt of the written recommendation of the Historic Preservation Board, the Planning Commission shall schedule a public hearing.
- D. The Director of Planning and Development Services shall give notice of the date, place, time and purpose of the hearing, and the recommendation of the Historic Preservation Board by first class mail to all applicants, owners, and occupants of the improvement at least twenty (20) days prior to the date set for the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls, if they are otherwise not known. Notice of the hearing shall also be advertised once in the newspaper.
- E. The Planning Commission shall conduct a public hearing and shall provide a reasonable opportunity for all interested parties to express their opinions.
- F. At the conclusion of the public hearing, but in no event more than thirty (30) days from the date set for the initial public hearing or any continuance thereof for the designation of a proposed historic landmark or historic site, the Planning Commission shall recommend, in writing, approval in whole or in part, or disapproval in whole or in part, of the application. Such written determination shall contain a description of the actual property or properties to be designated and shall be filed with the City Council, the City Clerk, and the Building Official. The City Clerk shall mail notice of such decision to the applicants and the owners and occupants of the proposed designated historic site or historic landmark. Notice shall also be mailed to any other interested parties as may request a copy thereof.
- G. The City Council, within thirty (30) days of receipt of the recommendations from the Planning Commission, or as soon thereafter as possible, shall by resolution approve the application in whole or in part, or shall by motion disapprove it in its entirety. The City Council shall hold a public hearing on such proposed resolution. Notice of the time and date set for the public hearing on such proposed resolution shall be mailed to all applicants and the owners and occupants of the proposed designated historic site or historic landmark. The Council, in its public hearing on the proposed resolution, shall provide a reasonable opportunity for all interested persons to express their opinions.
- H. The City Clerk shall notify the Building Official of any official designation adopted by resolution by the City Council. The Clerk shall also file within ninety (90) days of such designation with the County Recorder a certified copy of the resolution which shall include the name of the current property owner, the designating entity, the specific historic resources designation and a legal description of the property, together with a notice briefly stating the fact of said designation and a summary of the effects said designation will have. The Clerk further shall mail a copy of the

resolution approving said designation or a copy of the minute order showing disapproval of said designation, to all applicants and the owners and occupants of the proposed designated historic site or historic landmark, and to any other person who requests a copy.

- I. Failure to send any notice by mail to any property owner where the address of such owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed designation. The Planning Commission and Council may also give such other notice as they may deem desirable and practicable.
- J. While an application for designation of an improvement as an historic landmark or the designation of an historic site is pending, no building, alteration, demolition, or removal permits for any proposed historic site or historic landmark shall be issued. Exceptions may be considered in case of hardship as defined in Section.9.81.14 of this Chapter.
- K. Annually, the Historic Preservation Board shall review the register of historic designations and present it to the Council, along with any recommended changes.

#### **9.81.07 Permit Required.**

It is unlawful for any person to tear down, demolish, construct, alter, remove or relocate any improvement, or any portion thereof, which has been designated an historic landmark or historic site pursuant to the provisions of this Chapter, or to alter in any manner any exterior architectural feature of such an historic landmark or historic site, or to place, erect, alter, or relocate any sign on an historic landmark or historic site, without first obtaining written approval to do so in the manner provided in this Chapter from the Director of Planning and Development Services.

#### **9.81.08 Permit Approval Procedure.**

The following procedures shall be followed in processing applications for approval of work covered by this Chapter:

- A. The Building Official shall report any application for a demolition permit or a building permit to work on a designated historic site or historic landmark to the Director of Planning and Development Services. If the permit seeks to demolish or significantly alter or reconstruct the historic site or historic landmark, the Director of Planning and Development Services shall refer such application to the Historic Preservation Board for its review and recommendation. The Historic Preservation Board shall review the application and shall submit its written recommendation to the Planning Commission within sixty (60) days after receipt of the application from the Director of Planning and Development Services. In connection with its review, the Historic Preservation Board may hold hearings and may require any documentation it believes reasonably necessary to make its recommendation. The Historic Preservation Board shall make all recommendations in accordance with the prescriptive standards adopted pursuant to Section 9.81.05 and 9.81.04 F.

- B. If the permit seeks to make minor alterations or repairs, the Director of Planning and Development Services shall review the permit and, if the proposed work complies with the Central Clovis Design Standards, as may be amended, approve the permit. Minor alterations are those alterations which the Director of Planning and Development Services or his/her designee determines will not adversely affect the exterior architectural characteristics nor the historical or aesthetic value of the historic structure, its site, or surroundings.
- C. If no building permit would otherwise be required pursuant to the City Code, application for approval to pursue work on a designated historic site or historic landmark shall be made to the Director of Planning and Development Services. If the proposed work is in compliance with the Central Clovis Design Standards, as may be amended, the Director of Planning and Development Services shall approve the application.
- D. All applications shall be accompanied by plans and specifications describing the proposed work as well as any other material considered by the Director of Planning and Development Services, Historic Preservation Board, or the Planning Commission to be reasonably necessary for the proper review of the proposed project.
- E. Whenever the application is to tear down, demolish, construct, alter, remove, or relocate any improvement, or any portion thereof, which has been designated a historic landmark or historic site pursuant to the provisions of this Chapter, the Planning Commission shall hold a public hearing thereon. The Planning Commission may hold public hearings on other applications as they deem necessary.

The hearing shall be held at the next available regularly scheduled Planning Commission meeting after receipt of the Historic Preservation Board's recommendation, and after proper notice has been given of such hearing. Notice of such hearing shall be given by first class mail to each applicant at least ten (10) days prior to the date set for such hearing. Notice of the hearing shall also be advertised once in the newspaper not less than five (5) calendar days prior to said hearing. Any hearing may be continued from time to time by the Planning Commission.

- F. At the close of the hearing, the Planning Commission shall approve or disapprove, in whole or in part, such application in accordance with the standards adopted pursuant to Section 9.81.05 and 9.81.04 F, considering the recommendations of the Historic Preservation Board. The Planning Commission's decision shall be in writing and shall state the findings of fact relied upon in reaching such decision. Such decision may be appealed to the City Council.

### **9.81.09 Permit Approval Criteria.**

The Director of Planning and Development Services, Planning Commission, or the City Council upon appeal, shall issue an approval for any proposed work as described in Section 9.81.08 based upon the following criteria or other criteria as determined by the Planning Commission pursuant to Section 9.81.05:

- A. In the case of any property designated a historic landmark, the proposed work would not detrimentally alter, destroy, or adversely affect any exterior architectural feature; or
- B. In the case of construction of a new improvement, building, or structure upon a historic site, the exterior of such improvements will not adversely affect and will be compatible with the external appearance of existing designated improvements, buildings, and structures on said site.

### **9.81.10 Appeals.**

Any interested party may appeal any decision of the Planning Commission pursuant to Section 9.81.09 to the City Council by filing an appeal within fifteen (15) days after the date of the notice of the Planning Commission's decision in accordance with the procedures and requirements set forth in Chapter 9.90 of the Municipal Code.

### **9.81.11 Ordinary Maintenance and Repair.**

Nothing in this Chapter shall be construed to prevent any reasonable uses of any property or properties covered by this Chapter that are not in conflict with the purposes of this Chapter, including the ordinary maintenance or repair of said property that does not involve a change in design, material, or external appearance thereof.

### **9.81.12 Unsafe or Dangerous Conditions.**

Nothing in this Chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct the unsafe or dangerous condition of any structure, or feature or part thereof, covered by this Chapter, where such condition has been declared unsafe or dangerous by the Building Official or the Fire Marshal, and where the proposed measures have been declared necessary by such officials to correct such condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed. In making a determination as to whether such work is reasonably necessary as aforesaid, the above-mentioned officials may refer to, and be guided by, the State Historical Building Code (H&S Code section 18950 et seq.) as the same may from time to time be amended, revised, or replaced.

### **9.81.13 Duty to Keep in Good Repair.**

The owner, occupant, or other person in actual charge of a historic resource shall keep in good repair all of the exterior portions of such improvement, building or structure. It shall be the duty of the Building Official to enforce this Section.

#### **9.81.14 Showing of Hardship.**

The Planning Commission need not disapprove an application for a permit to carry out any proposed work on a historic landmark or a historic site, if the applicant presents clear and convincing evidence of facts demonstrating to the satisfaction of the Planning Commission that such disapproval will cause immediate and substantial hardship on the applicant because of conditions peculiar to the person seeking to carry out the proposed work, whether this be the property owner, tenant, or resident, or because of conditions peculiar to the particular improvement, building, or structure or other feature involved, and that failure to disapprove the application will be consistent with the purposes of this Chapter. In determining whether extreme hardship exists, the Planning Commission shall consider, among others, the following criteria:

- A. Whether denial of the applicant will diminish the value of the subject property so as to leave substantially no value.
- B. Whether reasonable utilization of the property is prohibited or impractical.

If a hardship is found to exist under this Section, the Planning Commission shall make a written finding to that effect and shall specify the facts and reasons relied upon in making such finding. Such finding may be appealed to the City Council pursuant to the provisions of Section 9.81.10.

#### **9.81.15 No Retroactive Application.**

The provisions of this Chapter shall be inapplicable to the construction, alteration, demolition or removal of any structure or other feature on a designated historic landmark or historic site, where a permit for the performance of such work was issued prior to initiation of proceedings for such designation, and where such permit has not expired or been cancelled or revoked, provided that construction is started and diligently prosecuted to completion in accordance with the City Building Code.

#### **9.81.16 Failure to Act.**

If for any reason, the Historic Preservation Board fails to take action within the timelines provided in this Chapter, the matter shall automatically proceed to the Planning Commission for consideration and action.

Section 2. This Ordinance shall go into effect and be in full force from and after thirty (30) days after its final passage and adoption.

APPROVED:

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Mayor

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City Clerk

\* \* \* \* \*

The foregoing Ordinance was introduced and read at a regular meeting of the City Council held on this \_\_\_ day of \_\_\_\_\_ 2022, and was adopted at a regular meeting of said Council held on this \_\_\_ day of \_\_\_\_\_, 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated:

DRAFT

\_\_\_\_\_

City Clerk



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: July 1, 2024

SUBJECT: Receive and File - Summary of additional stakeholder meetings relating to Development Impact Fees for Fiscal Year 2024-2025.

**Staff:** Sean Smith, Supervising Civil Engineer  
**Recommendation:** Receive and File

ATTACHMENTS: None.

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### RECOMMENDATION

For the City Council to receive and file updated information on the outcome of additional meetings with the building industry following the June 10, 2024, Council approved increase to the Development Impact Fees.

### EXECUTIVE SUMMARY

On June 10, 2024, Council approved an increase to the City's development impact fees with a Construction Cost Index (CCI) to most rates. The two exceptions were the Fire Transition Fee and Water Major Facilities Fee. The Fire Transition Fee increased by \$185 per gross acre, due to rising property values. The Water Major Facility Fee increased by 105% driven primarily by the lack of implementing recommended rate adjustments over the last two years. The approved fee revisions will be effective August 12, 2024.

At the June 10, 2024, City Council meeting direction was given to staff to continue meeting with stakeholders and to return on July 1, 2024, to provide an update on the outcome of the meetings. Staff will provide a verbal update to Council on progress made during the subsequent meetings.

**BACKGROUND**

Stakeholders provided public comments during the June 10, 2024, meeting and requested additional time to adequately review and consider information related to Development Impact Fee rate adjustments.

City staff began a series of public meetings in May 2024 to discuss the update to the Development Impact Fees for Fiscal Year 2024-2025. Over 100 stakeholders were invited to the meetings that took place on May 16, 23, 29, and June 6. All technical information supporting the fee adjustments were made available to the public for review on May 21, 2024.

Following the City Council meeting of June 10, 2024, staff was directed to continue holding meetings with the industry regarding the rate revisions. Meetings were immediately scheduled and held on June 13, 20, and 27 with invitations sent to over 100 stakeholders. Engineering and Public Utilities staff as well as a representative from Provost and Pritchard, the City's water consultant, attended each meeting. Staff also made time to meet individually with members of the community to answer questions and provide additional information as requested.

**FISCAL IMPACT**

None.

**REASON FOR RECOMMENDATION**

As this is a receive and file, no action is required.

**ACTIONS FOLLOWING APPROVAL**

None.

Prepared by: Sean Smith, Supervising Civil Engineer

Reviewed by: City Manager *SA*





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: July 1, 2024

SUBJECT: Consider Adoption - **Ord. 24-10**, OA 2024-001, A request to amend the Development Code to modify the description R-2 (Medium-High Density Residential) Zone District to increase the maximum density from 15 to 20 dwelling units per acre) and to modify the R-3 (Multi-Family Residential, High Density) Zone District to increase the minimum density from 15.1 to 20.1 units per acre. **(Vote 4-0-1 with Councilmember Bessinger absent)**

**Staff:** Briana Parra, City Clerk  
**Recommendation:** Adopt

ATTACHMENTS: None

This item is on the regular agenda because at introduction it was approved with a less than unanimous vote.

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



# CITY of CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: July 1, 2024

SUBJECT: Consider Approval – Cost-of-Living Increase and Updated Salary Schedule for Executive Management Employees.

**Staff:** Shonna Halterman, General Services Director

**Recommendation:** Approve

ATTACHMENTS: None.

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### RECOMMENDATION

For City Council to approve the salary schedule for executive management employees.

### EXECUTIVE SUMMARY

As required by Senate Bill 1436 (codified in Government Code section 54953(c)(3)), a local agency is required to verbally report a summary of recommended changes to executive management salaries in an open meeting before final action is taken by the legislative body.

### BACKGROUND

Effective July 1, 2024, represented employees will be provided a 3% cost-of-living increase in accordance with their individual memorandum of understanding. In addition, as provided in Resolution No. 22-73 approved on July 5, 2022, unrepresented management and executive management employees are also to be provided a 3% cost-of-living increase effective July 1, 2024. Approval of the updated salary schedule is needed to implement the increases.

As required by Senate Bill 1436, a local agency is required to orally report a summary of recommended changes to executive management salaries in an open meeting before final action on the proposed changes. The chart below includes the proposed updated salary ranges

for executive management positions including the 3% cost-of-living increase effective July 1, 2024:

**CITY OF CLOVIS**  
**MANAGEMENT (MSC) - Monthly Salary Schedule - Effective July 1, 2024**

Revised 05/28/24

3% Wage Increase

Code	Position	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
6020	Assistant City Manager	820	16,258	17,071	17,925	18,821	19,762
6160	City Manager	899	21,341	22,408	23,528	24,704	25,939
6540	Director of Planning & Development Services	720	15,248	16,010	16,811	17,652	18,535
6270	Economic Develop, Housing & Communications Director	700	14,523	15,249	16,011	16,812	17,653
6330	Finance Director	720	15,248	16,010	16,811	17,652	18,535
6385	Fire Chief	730	16,021	16,822	17,663	18,546	19,473
6410	General Services Director	720	15,248	16,010	16,811	17,652	18,535
6600	Police Chief	830	16,771	17,610	18,491	19,416	20,387
6680	Public Utilities Director	790	16,258	17,071	17,925	18,821	19,762

In addition, executive management staff receive vacation, holidays, sick leave, management leave, and health benefits similar to all management employees. These specific benefits are not proposed to be changed and the current benefits are outlined in the executive management benefit summary located at <https://cityofclovis.com/wp-content/uploads/2023/04/Executive-Management-Benefit-Summary-January-2024.pdf>.

**FISCAL IMPACT**

The approximate fiscal impact for the cost-of-living increases for executive management is \$85,200. Adequate funds are in the FY 24-25 budget for the increase.

**REASON FOR RECOMMENDATION**

Per Council approval on July 5, 2022, executive management is provided the same 3% cost-of-living increase as the full-time represented employees, effective July 1, 2024. Orally reporting the recommended 3% cost-of-living increase for executive staff is required before Council approval of the updated salary schedule.

**ACTIONS FOLLOWING APPROVAL**

The 3% cost-of-living increase will be effective July 1, 2024.

Prepared by: Shonna Halterman, General Services Director

Reviewed by: City Manager *SH*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: July 1, 2024

SUBJECT: Consider items associated with fees under the Planning and Development Services Department and find that the project is exempt from further environmental review under Section 15061(b)(3) of the California Environmental Quality Act Guidelines. City of Clovis, applicant.

a. Consider Approval - Res. 24-\_\_\_\_, A request to approve a resolution amending Plan Check, Inspection Services, Encroachment Permits, and Community Investment Program Rates.

b. Consider Approval - Res. 24-\_\_\_\_, A request to approve the 2024 City of Clovis Planning Division fee schedule.

**Staff:** Sean Smith, Supervising Civil Engineer / George González, Senior Planner

**Recommendation:** Approve

ATTACHMENTS: 1. Draft Resolution, Amending Plan Check, Inspection Services, Encroachment Permits, and Community Investment Program Rates  
2. Draft Resolution, Approving the 2024 City of Clovis Planning Division Fee Schedule

### CONFLICT OF INTEREST

Councilmembers should consider recusal if a campaign contribution exceeding \$250 has been received from the project proponent (developer, applicant, agent, and/or participants) within the preceding 12 months (Government Code 84308).

### RECOMMENDATION

For the City Council to approve Res. 24-\_\_\_\_, amending Plan Check, Inspection Services, Encroachment Permits, and Community Investment Program Rates.

For the City Council to approve Res. 24-\_\_\_\_, approving the 2024 City of Clovis Planning Division fee schedule.

## **EXECUTIVE SUMMARY**

Staff is recommending updates to the following fee programs:

1. Engineering Division hourly rates and inspection fees
2. Planning Division fees

### Engineering Division Hourly Rates

Engineering Division hourly rates need to be adjusted from \$145 to \$150 per hour to follow increases in operational overhead costs to maintain a functional level of service to the development community and operation of the Community Investment Program, together with offsetting increases in operational costs. The revised rate will take effect beginning September 3, 2024, 60 days after approval.

### Planning Division Fee Schedule

The Planning Division fee schedule was last updated by Resolution 23-35, which took effect July 10, 2023. The operational costs have increased for the Planning Division similar to the costs for the Engineering Division. A 4.10% across-the-board increase is recommended, based on the 5-year average change in the consumer price index (CPI). This methodology is consistent with the strategy used in conjunction with the 2022 and 2023 annual fee updates, following a comprehensive update in 2021. The 5-year average was used because it accounts for the changes in costs that have occurred while softening the effects of single-year CPI changes that have occurred over the last few years. The revised fee schedule will provide the funding necessary for the Planning Division to maintain a functional level of service to the public. The revised rates will take effect beginning September 3, 2024, 60 days after approval.

## **PROPOSAL AND ANALYSIS**

### **Plan Check, Inspection Services, Encroachment Permits, and Community Investment Program Rates**

The Engineering Division last updated the hourly rates in 2023 by Resolution 23-34. The cost of employee benefits has been increasing and is expected to continue to rise for the foreseeable future. Staff is recommending an hourly rate of \$150 to follow the overhead increases of 2023.

#### Hourly Billing Rate

In accordance with the Clovis Municipal Code, the Council establishes, by resolution, a schedule of fees for inspection, staking, and other services to be rendered by the City in connection with work performed by Engineering staff. The \$145 per hour billing rate was last updated in May 2023 by Resolution 23-34. Going forward, staff will review the hourly rate and adjust according to the CPI as part of the annual, or biannual review of the Development Impact Fees.

#### Stakeholder Outreach

An email was provided to a group of over 130 stakeholders describing the proposed increase and all were offered the ability to meet in person or virtually. The stakeholders included the Building Industry Association (BIA), Fresno Metropolitan Flood Control District (FMFCD), the Clovis Unified School District, and several local residential and non-residential developers.

None of the contacted stakeholders have provided opposition to the hourly rate increase. The revised rate will take effect beginning September 3, 2024, 60 days following the approval of the resolution by Council.

### **Planning Division Fee Schedule**

Based on the evaluation completed in May 2024, staff is recommending an update to the 2023 Planning Division Fee Schedule utilizing the Consumer Price Index (CPI) for All Urban Consumers. The CPI has been identified as the most applicable index for an adjustment to the Planning fees, which are based primarily on personnel costs. The recommended methodology utilizes the average of the last five (5) years of the CPI percentage changes to arrive at a total increase of 4.10%. While it is relatively common to use the single year change in CPI to make these routine annual adjustments, a five-year average is recommended for the 2024 update. The five-year average of the CPI percentage change has been consistently recommended by staff since the comprehensive fee analysis was completed in 2021. Generally speaking, recommending the five-year average helps avoid the “spiking effect” that may occur if only the most recent year’s CPI was utilized. The following entitlement types are excepted from the recommended CPI increase:

- Small Home Occupation Permits, Staff Research & Document Preparation, and the Redistribution Fee for applications during the commenting period are proposed to be increased from the current hourly rate of \$145 per hour to \$150 per hour as proposed by the Engineering Division.
- The “per acre, per building permit, per sign, per unit, and per lot” fees are also not being proposed to change.
- The current fee for the “Conditional Use Permit, Extension” is proposed to be modified to add “Minor Amendments” to the description to better accommodate the type of applications that are routinely processed in the Planning Division. A workflow analysis indicates that this fee should be increased from \$2,602 to \$3,494.
- The three environmental assessment fees (Categorical Exemption, Negative Declaration, and Mitigated Negative Declaration) now include the \$50 County Clerk filing fee for each entitlement type.
- A new fee has been added to the Planning fee schedule, titled “Willow Corridor Annexation Fair Share Cost Recovery- Site Specific Development,” in the amount of \$174 per acre. This fee will be applied to all developments within the Willow Corridor Annexation boundaries (north of Shepherd, between N. Willow and N. Peach Avenues), encompassing approximately 550 acres recently annexed to the City. The recommended fee will allow the City to recoup a portion of its expenses for processing the Willow Corridor Annexation by collecting the “per-acre” portion of the fees from projects as they develop. These fees would otherwise have been paid by these projects in conjunction with rezoning and annexation applications.

The new rates within the Planning Division Fee schedule will take effect September 3, 2024, 60 days following the approval of the resolution by Council.

*Stakeholder Outreach*

An email was provided to a group of over 130 stakeholders describing the proposed changes to the 2024 Planning Division Fee Schedule on June 13, 2024. The stakeholders were the same as the Plan Check, Inspection Services, Encroachment Permits, and Community Investment Program Rates, which included the Building Industry Association (BIA), Fresno Metropolitan Flood Control District (FMFCD), the Clovis Unified School District, and several local residential and non-residential developers. No comments had been received as of the completion of this staff report.

*California Environmental Quality Act (CEQA)*

The proposed fee adjustments have been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and based upon the Public Resources Code Section 15061 (b)(3), there is no substantial evidence that the project will have a significant effect on the environment, therefore, is exempt from CEQA. A Notice of Exemption has been completed during the preliminary review and is kept for public review with the project file during the processing of the project application. Staff will file the notice with the County Clerk if the fee adjustments are approved.

**FISCAL IMPACT**

Engineering Department revenue increases will offset increased staff costs and allow City staff to maintain the current level of plan check and inspection services. The increase in the hourly rate will cover the increased costs of CIP staff and will not exceed the estimated amount required to provide the service for which the applicable fee is charged.

Planning Division revenue increases will offset increased staff costs and allow City staff to maintain the current level of service for entitlement applications. The fee increases will not exceed the estimated amount required to provide the service for which the applicable fee is charged.

**REASON FOR RECOMMENDATION**

Staff is recommending an increase in the hourly billing rate to \$150 per hour to cover the cost of staff services provided on Plan Checks, Inspection Services, Encroachment Permits, and Community Investment Program projects.

Staff is recommending a revision to the Planning Division fee schedule to cover the cost of staff services provided on entitlement applications. The recommended adjustments are consistent with the discussion presented to stakeholders and the Council in 2023, during which staff outlined its intent to proceed with routine or annual adjustments to the fees.

**ACTIONS FOLLOWING APPROVAL**

1. Engineering staff will notify the development community and implement the new rates for Plan Check, Inspection Services, Encroachment Permits, and the Community Investment Program 60 days after approval of the resolution.
2. Planning staff will notify the development community and implement the new rates for the Planning Fee Schedule 60 days after approval of the resolution.

Prepared by: Sean Smith, Supervising Civil Engineer and George González, MPA, Senior Planner

Reviewed by: City Manager 



**RESOLUTION 24-\_\_\_****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS AMENDING PLAN CHECK, INSPECTION SERVICES, ENCROACHMENT PERMITS, AND COMMUNITY INVESTMENT PROGRAM RATES**

**WHEREAS**, Chapter 2 of Title 7 of the Clovis Municipal Code provides rules and regulations for excavations and other work in City streets, for issuance of permits and fees therefor, and provides for a schedule of fees for engineering, inspection, staking and other services rendered by the City in connection with such work performed thereunder; and

**WHEREAS**, the Clovis Municipal Code, provides that fees be fixed by resolution; and

**WHEREAS**, the City Council of the City of Clovis desires to revise fees associated with services rendered by the City.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Clovis hereby adopts the following revisions to the fee schedule for services hereinafter set forth:

**HOURLY RATE**

The hourly rate for Engineering services rendered shall be set at \$150 per hour.

**WITH RESPECT TO INITIAL SUBMITTAL FEES:**

Initial plan review fees shall include four (4) submittals of the plans and preparation of all standard agreements (as indicated below). All additional submittals and preparation of non-standard agreements shall be subject to additional review fees per hour or fractions thereof at the Hourly Rate. Overtime fees will be 1.5 times the Hourly Rate per hour or fractions thereof with a two-hour minimum.

**ENCROACHMENT PERMIT FEES:**

1. The administrative charge for processing an application for an encroachment permit shall be based on 1 hour.
2. A minimum inspection fee of 3 hours at the hourly rate, or a fee calculated using the following inspection fees, whichever is greater, shall be applied to the proposed facilities to be installed within the City right-of-way. The fee shall be paid prior to issuance of a permit for the installation or construction of any of the items installed in the City right-of-way.

**INSPECTION FEES:**

See Attachment A

**HOURLY CHARGES FOR REINSPECTION/RETEST AND OVERTIME:**

Inspector	Based on the Hourly Rate
Inspector (overtime)	1.5 times the Hourly Rate, two hour minimum
Other City Staff	Based on the Hourly Rate

**COMMUNITY INVESTMENT PROGRAM FEES:**

Staff charges to the Community Investment Program will be billed at the established Hourly Rate.

**SUBDIVISION PLAN CHECKING, TESTING, AND INSPECTION FEES:**

Each person submitting a parcel map or a subdivision map to the City shall pay to the City, prior to submission of final subdivision or parcel map for approval, a fee for the checking of improvement plans associated with conditions of approval, testing, and inspecting all proposed improvements within the public right-of-way as follows:

- On the first \$10,000.00 of the estimated cost of improvements: 7%
- On the next \$490,000.00 of the estimated cost of improvements: 3.75%
- On the estimated cost of improvements in excess of the \$500,000: 2%

Said fees established by Section shall be based upon final cost estimates approved by the City Engineer and shall include all improvements as required under the conditions of approval for the entitlement, adjustment in or refund of such fees shall be made once fees have been paid; except when an entitlement is withdrawn or a reversion to acreage map is recorded, the unexpended portion of the required fee may be refunded upon written request made by the payer of said fees to the City Engineer.

**OTHER ENTITLEMENT PLAN CHECK FEES**

Each person submitting an entitlement other than a parcel map or a subdivision map to the City shall pay to the City, prior to submission of improvement plans for approval, a fee at the Hourly Rate based on 10 hours plus 11 hours per gross acre of development for the checking of all proposed improvement plans associated with conditions of approval within the public right-of-way. For entitlements with minimal conditioned work, the fee shall be based on 4 hours at the Hourly Rate.

**INITIAL SUBMITTAL FEES:**

The initial submittal of all tract map and parcel map reviews shall include a non-refundable payment for services to be rendered as follows:

- For each initial submittal of parcel maps with minimal off-site improvements: 1.5 hours
- For each initial submittal of parcel maps with significant off-site improvements: 12 hours
- For each initial submittal of tract maps: 30 hours

The initial submittal of all entitlements other than tract map and parcel map reviews shall include a non-refund able payment for services to be rendered as follows:

- For each initial submittal: either 20 hours or 10 hours plus 11 hours per gross acres, whichever is less.
- For each initial submittal of entitlements with minimal conditioned work: 4 hours

Said fees for this section shall be considered part of the fees calculated in Paragraphs 2 or 3 above. This initial payment shall be credited against the total plan check and/or inspection fee for the project with the balance due paid prior to final map or improvement plan approval.

The above said plan review fee shall include four (4) submittals of the plans and preparation of all standard agreements (as indicated below). All additional submittals and preparation of non-standard agreements shall be subject to additional review fees of per hour or fractions thereof based on the Hourly Rate. Overtime fees will be 1.5 times the Hourly Rate per hour or fractions thereof with a two-hour minimum.

Standard Agreements shall consist of the following:

- Subdivision and Parcel Map Agreement (a draft and one revision)
- Landscape Maintenance District Covenants

Non-Standard Agreements consist of the following:

- Deferment Agreements (includes fees and improvements)
- Perpetual Maintenance Agreements
- Escrow Instructions
- Special Research Requests
- Reciprocal Access/Maintenance Agreements
- Solid Waste and/or Temporary Turnaround Covenants
- Deeds, Easements and Irrevocable Offers of Dedication
- Right of Entry
- Partial Reconveyances
- Temporary Basin Maintenance Covenants
- Legal Descriptions for Street and Utility

**BE IT FURTHER RESOLVED** that the provisions of this Resolution shall not in any way affect provisions for fees or charges in any other Resolution or Ordinance of the City of Clovis.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on July 1, 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: July 1, 2024

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

INSPECTION FEES 2024-2025				
Fee description	Quantity	Unit	Unit Price	Total Fee
<b><u>STREET WORK</u></b>				
PERMIT PROCESSING FEE *	0	LS	\$245.00	\$0.00
DEVELOPER APPLICATION FEE	0	LS	\$150.00	\$0.00
MINIMUM INSPECTION FEE	0	EA	\$450.00	\$0.00
RE-INSPECTION FEE (per occurrence)	0	EA	\$225.00	\$0.00
WORKING IN R-O-W WITHOUT PERMIT	0	DAY	\$500.00	\$0.00
VALLEY GUTTER	0	LF	\$3.00	\$0.00
CURB / CURB AND GUTTER	0	LF	\$1.50	\$0.00
SIDEWALK	0	SF	\$0.80	\$0.00
MISC CONCRETE	0	SF	\$0.80	\$0.00
DRIVE APPROACH	0	SF	\$0.80	\$0.00
A/C PAVEMENT / TRENCH REPAIR	0	SY	\$2.25	\$0.00
TRAFFIC MARKING / SIGNING	0	EA	\$150.00	\$0.00
STREET LIGHTS	0	EA	\$37.50	\$0.00
TRAFFIC CONTROL / LANE CLOSURE	0	EA	\$300.00	\$0.00
TRAFFIC CONTROL / DETOUR	0	EA	\$750.00	\$0.00
<b><u>SEWER FACILITIES</u></b>				
SEWER LATERAL	0	EA	\$47.50	\$0.00
SEWER MAIN	0	LF	\$3.00	\$0.00
MANHOLE	0	EA	\$100.00	\$0.00
<b><u>WATER FACILITIES</u></b>				
WATER TIE-IN, 1"-3"	0	EA	\$172.50	\$0.00
WATER TIE-IN, 4"-6"	0	EA	\$345.00	\$0.00
WATER TIE-IN, 8" AND LARGER	0	EA	\$690.00	\$0.00
WATER SERVICE HOT TAP	0	EA	\$100.00	\$0.00
WATER MAIN / SERVICE LINE	0	LF	\$3.00	\$0.00
WATER METER	0	EA	\$0.00	\$0.00
FIRE HYDRANT	0	EA	\$100.00	\$0.00
BLOW-OFF	0	EA	\$100.00	\$0.00
<b><u>DRAINAGE FACILITIES</u></b>				
STORM DRAIN MAIN	0	LF	\$3.00	\$0.00
MANHOLE	0	EA	\$100.00	\$0.00
SIDEWALK DRAINS	0	EA	\$100.00	\$0.00
DRAIN INLETS	0	EA	\$100.00	\$0.00
<b><u>LANDSCAPE FACILITIES</u></b>				
PUBLIC LANDSCAPE	0	SF	\$0.13	\$0.00
PUBLIC IRRIGATION (per each component)	0	EA	\$75.00	\$0.00
WELO INSPECTION	0	EA	\$150.00	\$0.00
<b>SUB TOTAL OF FEES</b>				<b>\$0.00</b>
FIBER UTILITY PROCESSING FEE (1-3 hrs.)	0	HR	\$150.00	\$0.00
<i>Credit</i>			\$0.00	\$0.00
<i>Processing Fee Waiver</i>	0		\$185.00	\$0.00
<b>TOTAL FEES</b>				<b>\$0.00</b>

NOTE:

\* includes a \$20 Energov Fee

**RESOLUTION 24-\_\_****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING THE 2024 CITY OF CLOVIS PLANNING DIVISION FEE SCHEDULE AND FINDING THE PROJECT EXEMPT FROM FURTHER ENVIRONMENTAL REVIEW UNDER SECTION 15061(B)(3) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES**

**WHEREAS**, the City of Clovis Planning Division is proposing an update to the 2023 Planning Division Fee Schedule; and

**WHEREAS**, the update to the Fee Schedule is based primarily on the Consumer Price Index (CPI) for All Urban Consumers, including utilizing the average of the last five (5) years of the Consumer Price Index (CPI) percentage changes to arrive at a total increase of 4.10% to cover the increased costs to the City of providing the applicable services; and

**WHEREAS**, certain exceptions to the 4.10% increase are included where the fee is based on the hourly rate; and

**WHEREAS**, the hourly rate is proposed to increase from the current rate of \$145 to \$150 to cover the increased costs to the City of providing the applicable services; and

**WHEREAS**, the “per acre, per building permit, per sign, per unit, and per lot” fees are not being proposed to change; and

**WHEREAS**, the City published a Notice of the City Council Public Hearing for July 1, 2024, to consider the 2024 City of Clovis Planning Division fee schedule in the Business Journal ten days prior to said hearing; and

**WHEREAS**, on July 1, 2024, the City Council considered testimony and information received at the public hearing and the oral and written reports from City staff, as well as other documents contained in the record of proceedings relating to the 2024 City of Clovis Planning Division fee schedule, which are maintained at the offices of the City of Clovis Department of Planning and Development Services; and

**WHEREAS**, the City Council has had an opportunity to review and consider the entire Administrative Record relating to the Project, which is on file with the City of Clovis Department of Planning and Development Services (“Department”), and reviewed and considered those portions of the Administrative Record determined to be necessary to make an informed decision, including, but not necessarily limited to, the staff report, the written materials submitted with the request, and the verbal and written testimony and other evidence presented during the public hearing; and

**ATTACHMENT 2**

**WHEREAS**, the proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and, based upon the Public Resources Code Section 15061 (b)(3), there is no substantial evidence that the project will have a significant effect on the environment, therefore, is exempt from CEQA.

**NOW, THEREFORE, BASED UPON THE ENTIRE RECORD OF THE PROCEEDINGS, THE CITY COUNCIL RESOLVES AND FINDS AS FOLLOWS:**

- 1. The City of Clovis Council approves the 2024 City of Clovis Planning Division fee schedule per **Attachment A** hereto and finds the fees set forth therein to be necessary to cover the increased costs to the City of providing the applicable services.
- 2. The City of Clovis Council finds that the request is in compliance with the provisions of the California Environmental Quality Act (CEQA) and based upon the Public Resources Code Section 15061 (b)(3), there is no substantial evidence that the project will have a significant effect on the environment.
- 3. The basis for the findings is detailed in the July 1, 2024, staff report, which is hereby incorporated by reference, the entire Administrative Record, as well as the evidence and comments presented during the public hearing.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on July 1, 2024, by the following vote, to wit.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

DATED: July 1, 2024

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



CITY of CLOVIS

# City of Clovis Planning Division FEE SCHEDULE

AGENDA ITEM NO. 18.

The following are the fees to be paid when filing an application with the City of Clovis Planning Division. The fee must accompany the application. Once an application is accepted, refunds and/or withdrawals shall be processed in accordance with Development Code Section 9.50.070.

Effective Date: September 3, 2024 (Adopted on July 1, 2024 by City Council Resolution 24-XX)

ENTITLEMENT	FEE
<b>ABANDONMENT</b>	
Abandonment (Summary)	\$1,110
Abandonment of Right-of-Way	\$1,760
<b>AMENDMENTS</b>	
General Plan Amendment	\$14,116 + \$55/Acre
Ordinance Amendment	\$6,502
<b>ANNEXATION/ REORGANIZATION</b> Does not include LAFCo Fees	
Sphere of Influence Expansion	\$24,602 + \$119/Acre
Annexation/ Reorganization	\$24,602 + \$119/Acre
Willow Corridor Annexation Fair Share Cost Recovery- Site Specific Development	\$174 Per Acre
Agricultural Preserve Annexation (In addition to Annexation Fee)	\$7,803 + \$119/Acre
<b>APPEALS</b>	
Appeal requiring a City Council Hearing	\$1,760
Appeal requiring a Planning Commission Hearing	\$3,332
<b>ENVIRONMENTAL ASSESSMENT</b>	
Not part of any other application (The normal cost of environmental assessments, except EIRs is included in the various application fees)	
EIR or EA by Consultant hired by the City	Cost + 15% (\$10,000 Initial Deposit)
Categorical Exemption	\$1,214
Negative Declaration	\$4,465
Mitigated Negative Declaration	\$5,468
NEPA Compliance	Actual Cost
<b>HOME OCCUPATION PERMIT</b>	
Small Home Occupation Permit	\$150
Large Home Occupation Permit	\$260
<b>MISCELANEOUS</b>	
Adult Oriented Business Permit	\$8,398
Rear Yard Encroachment Permit	\$237
Staff Research & Document Preparation (Deferment Agreements, Zoning Confirmations, etc)	\$150/hr (1 Hr. Min.)
Determination of Use	\$4,904
Redistribution Fee (Within the commenting period)	\$150
Redistribution Fee (After the commenting period)	\$379
Sidewalk Permit (Contact the Economic Development Department for more information)	\$72
<b>RESIDENTIAL SITE PLAN REVIEW</b>	
Residential Site Plan Review, Single Family Residential, Subdivision	\$4,985 + 60/ Building Permit
Residential Site Plan Review, Single Family Residential Amendments, Individual Lot	\$947
<b>SIGN REVIEW</b>	
Sign Review	\$338 + \$20/Sign
Sign Review (Subdivision)	\$703 + \$20/Sign
Sign Review Amendment	1/2 Base Fee



**SITE PLAN REVIEW**

Site Plan Review, Non-Residential	\$6,204	+ \$1	AGENDA ITEM NO. 18.
Site Plan Review, Non-Residential (Requiring Planning Commission hearing)	\$10,485	+ \$119/Acre	
Site Plan Review, 1-4 Multifamily Units	\$4,470	+ \$55/Unit	
Site Plan Review, Multifamily Residential 5+ Units	\$6,204	+ \$55/Unit	
Site Plan Review, Multifamily Residential (Requiring Planning Commission hearing)	\$10,485	+ \$55/Unit	
Site Plan Review, Amendment	1/2 Established Fee		
Site Plan Review, Exterior Amendment/ Amendments to Conditions	\$1,462		

**MULTIFAMILY DESIGN REVIEW (Objective Standards)**

Multifamily Residential Design Review (1-4 Multifamily Units)	\$4,470	+ \$55/Unit
Multifamily Residential Design Review (5+ Multifamily Units)	\$6,204	+ \$55/Unit
Multifamily Design Review Amendment	1/2 Established Fee	

**SUBDIVISIONS**

Lot Line Adjustment- Minor (Involves one lot line)	\$1,191	
Lot Line Adjustment- Major (Involves multiple lot lines)	\$1,679	
Tentative Parcel Maps	\$7,424	
SB9 - Tentative Parcel Maps	\$6,610	
Final Parcel Maps	\$2,329	+ \$55/Lot or Unit
SB9 - Final Parcel Maps	\$2,248	+ \$55/Lot or Unit
Tentative Tract Map, Planning Commission	\$12,002	+ \$55/Lot or Unit
Tentative Tract Map, Planning Commission & City Council	\$14,604	+ \$55/Lot or Unit
Final Tract Map	\$3,359	+ \$30/Lot or Unit
Tentative Tract Map- Amendment/ Amendment to Conditions	1/2 Base Fee	
Refiling of an Expired Tentative Tract Map (Request can incorporate no changes to the approved map and must be filed within 6 months of expiration)	1/2 Established Fee	

**USE PERMITS**

Administrative Use Permit	\$1,787	
Conditional Use Permit	\$8,317	
Conditional Use Permit, requiring City Council Hearing	\$10,160	
Office & Business Campus PUD	\$10,973	+ \$35/Lot or Unit
Planned Development Permit (Residential and Non-Residential)	\$10,973	+ \$35/Lot or Unit
Conditional Use Permit, Major Amendment	\$6,421	
Conditional Use Permit, Minor Amendment/ Extension	\$3,494	
Temporary Use Permit	\$514	

**VARIANCE**

Single Family Residential	\$5,364	
All Other Variances	\$8,182	
Minor Deviation	\$893	
Minor Adjustment- Signs	\$1,082	

**ZONING**

Single Family Rezone/ Prezone	\$14,143	+ \$55/Acre
Rezone/ Prezone other than Single Family & PCC	\$14,143	+ \$55/Acre
Planned Commercial Center (PCC) Rezone/ Prezone	\$16,040	+ \$55/Acre
Planned Commercial Center (PCC) Rezone, Amendments/ Amendments to Conditions	1/2 Base Fee	
Mixed Use Zone	\$16,040	+ \$55/Acre
Master Plan Community Overlay District	\$19,400	+ \$55/Acre
Master Plan Community Overlay District Amendments- Minor Amendment	\$1,462	
Master Plan Community Overlay District Amendments- Major Amendment	1/2 Base Fee	

Planning and Development Services - Planning Division  
 1033 Fifth Street, Clovis CA  
 559-324-2340

<https://cityofclovis.com/planning-and-development/planning/applications-and-fees/>