



CITY of CLOVIS

AGENDA • CITY COUNCIL MEETING

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

February 14, 2022

6:00 PM

Council Chamber

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

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

Written Comments

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

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



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

Verbal Comments

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

Webex Participation

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

CALL TO ORDER

FLAG SALUTE - Councilmember Bessinger

ROLL CALL

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

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

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

- [1.](#) Administration - Approval - Minutes from the February 7, 2022 Council Meeting.
- [2.](#) Administration - Receive and File – Economic Development Corporation Serving Fresno County Quarterly Report, October-December 2021.
- [3.](#) Administration – Approval – Street Closure Requests for Special Events in Dry Creek Industrial Park.
- [4.](#) Administration - Approval – Request from Business Organization of Old Town for Temporary Street Closure of Various Old Town Streets to Hold the Annual Glorious Junk Days Antique and Collectible Show on September 18, 2022.
- [5.](#) General Services - Approval - Res. 22-____, Authorizing Amendments to the City’s Classification and Compensation Plans to Adopt the Landfill Supervisor Classification and Salary Range of \$7,875 to \$9,572 per month.
- [6.](#) Public Utilities – Approval – Bid Award for SPR 1987-048A, 79 N. Sunnyside Avenue Site Improvements, and Authorize the City Manager to Execute the Contract on Behalf of the City.
- [7.](#) Public Utilities – Approval – Res. 22-____, Approving and Authorizing Staff to Proceed with Submitting a Notice of Intent to CalRecycle to Comply with SB 1383 Regulations via SB 619.

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

- [8.](#) Consider Approval – Master Clovis Trails and Right-of-Way Use Agreement and the Memorandum of Interpretation between the City of Clovis and Fresno Irrigation District.

Staff: Scott Redelfs, Public Utilities Director

Recommendation: Approve

- [9.](#) Consider Approval – Consider an Assessment Increase Election in Landscape Maintenance District No. 1.

Staff: Glenn Eastes, Assistant Public Utilities Director

Recommendation: Approve

CITY MANAGER COMMENTS

10. Covid-19 Update.

COUNCIL COMMENTS

ADJOURNMENT

MEETINGS AND KEY ISSUES

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

Feb. 22, 2022 (Tue.) (Cancelled)

Mar. 7, 2022 (Mon.)

Mar. 14, 2022 (Mon.)

Mar. 21, 2022 (Mon.)

CLOVIS CITY COUNCIL MEETING

February 7, 2022

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Flores at 6:03 p.m.
Flag Salute led by Councilmember Ashbeck

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

PRESENTATION – 6:04

6:04 – ITEM 1 - PRESENTATION OF PROCLAMATION RECOGNIZING FEBRUARY AS TEEN DATING VIOLENCE AWARENESS MONTH.

The Clovis City Council presented a proclamation recognizing the month of February as Teen Dating Violence Awareness Month.

Nicole, Marjaree Mason Center Representative, introduced the Clovis West High School kNOw MORE ambassadors.

Kai Young and Riley Strunk shared information on the kNOw MORE program and the education and awareness activities conducted on school campuses.

PUBLIC COMMENTS – 6:13

Cheryl Medrano, resident, commented on her family’s living situation after the water main break on Sunnyside Avenue, just north of Third Street.

Debbie Britz, resident, shared concerns regarding the Research & Technology (RT) Park development plans for a potential upcoming project in the area.

CONSENT CALENDAR – 6:27

Motion by Councilmember Ashbeck, seconded by Councilmember Bessinger, that the items on the Consent Calendar be approved. Motion carried by unanimous vote.

2. Administration - Approved - Minutes from the January 18, 2022 Council Meeting.
3. Administration - Received and Filed - Business Organization of Old Town (B.O.O.T.) Second Quarter Report, October through December 2021.
4. General Services – Approved - Claim Rejection of the General Liability Claim on behalf of Victor Ray Vidrio, Jr.
5. Police – Approved – Authorize the City Manager to approve placement of a full time Police Officer at Step 5 of the salary range and include previously paid incentives.

6. Planning and Development Services – Approved – Bid Award for CIP 15-13, Landfill Left Turn Lane located at 15679 Auberry Road; and Authorize the City Manager to execute the contract on behalf of the City.
7. Public Utilities – Approved – Res. 22-13, Authorizing submittal of application for the City to receive grants and/or City payment funds from the Department of Resources Recycling and Recovery (CalRecycle); and authorizing the City Manager or a Designee to execute all documents necessary to implement and secure payments.

COUNCIL ITEMS – 6:29

6:29 – ITEM 8 - APPROVED – CHANGE OF COUNCIL MEETING SCHEDULE.

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

CITY MANAGER COMMENTS – 6:30

6:30 – ITEM 9 - COVID-19 Update.

COUNCIL COMMENTS – 6:33

CLOSED SESSION – 6:37

6:37 – ITEM 10 - GOVERNMENT CODE SECTION 54957.6 CONFERENCE WITH LABOR NEGOTIATORS AGENCY DESIGNATED REPRESENTATIVES: JOHN HOLT, ANDREW HAUSSLER, SHONNA HALTERMAN, LORI SHIVELY, SCOTT CROSS EMPLOYEE ORGANIZATION: CLOVIS POLICE OFFICERS ASSOCIATION, CLOVIS FIREFIGHTERS ASSOCIATION, CLOVIS EMPLOYEES ASSOCIATION, CLOVIS PUBLIC WORKS EMPLOYEES ASSOCIATION, CLOVIS PUBLIC SAFETY EMPLOYEES ASSOCIATION, CLOVIS PROFESSIONAL AND TECHNICAL EMPLOYEES ASSOCIATION, CLOVIS TRANSIT EMPLOYEES BARGAINING UNIT, CLOVIS TECHNICAL AND FINANCIAL PROFESSIONALS ASSOCIATION UNREPRESENTED EMPLOYEE: MANAGEMENT EMPLOYEES

Mayor Flores adjourned the meeting of the Council to February 14, 2022.

Meeting adjourned: 7:25 p.m.

Mayor

City Clerk



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: February 14, 2022

SUBJECT: Administration - Receive and File – Economic Development Corporation Serving Fresno County Quarterly Report, October-December 2021.

ATTACHMENTS: 1. EDC Second Quarter Report, October-December 2021

CONFLICT OF INTEREST

None

RECOMMENDATION

That the City of Clovis receive and file the Second Quarter Report, October-December 2021 from the Economic Development Corporation Serving Fresno County.

EXECUTIVE SUMMARY

The Economic Development Corporation serving Fresno County (EDC) has submitted their Second Quarter Report of activities for the City Council to receive and file, as required per the 2021-2022 Agreement with the City.

BACKGROUND

In the summer of 2021, the City of Clovis and the EDC entered into a contract for the 2021-2022 fiscal year to provide regional marketing and business services to Clovis businesses. The contract provides for \$40,000 in baseline funding and provides \$10,000 for a medical attraction study to be completed. This allows Clovis to be part of a regional effort in attracting commercial and industrial businesses to Clovis. Attached is a report detailing the progress of their activities to provide information to industrial/commercial representatives not currently located in Clovis for recruiting purposes, and continue to assist existing Clovis businesses with informational and/or technical assistance to access statewide business support programs.

Highlights of the EDC quarterly report include:

Q2 Snapshot

The EDC team conducts outreach marketing business expansion and retention services by:

- Providing an operational analysis to evaluate the health of the business. This tool offers us a thorough understanding of the appropriate referrals or resources needed for business growth or retention;
- Connecting businesses to labor subsidy programs;
- Providing education on federal/state/local tax incentives; and
- Providing referrals and information on financing assistance.

Stemming from direct outreach, workshops, one-on-one meetings, and marketing efforts, the areas of interest and number of referrals generated are reflected below:

	Q2 2021-2022
Businesses Contacted	28
Business Referrals	24

Type	Goal	Q2	FY21-22	Completion
Retention and Recovery Resource Event	2	0	0	0%
Economic Profile	1	0	0	0%
Incentive Brochure	1	0	0	0%
New Business Leads	40	27	27	68%
Targeted Healthcare Engagements	20	0	0	0%
Top 50 Business List	1	0	0	0%

FISCAL IMPACT

The City will forward the second quarter installment payment to EDC. The funds were budgeted in the 2021-2022 fiscal year budget.

REASON FOR RECOMMENDATION

The attached report meets the requirement established in the 2021-2022 Agreement between the EDC and the City of Clovis.

ACTIONS FOLLOWING APPROVAL

Staff will file the report.

Prepared by: Andy Haussler, Assistant City Manager

Reviewed by: City Manager AA



City of Clovis

Quarterly Activity Report

Quarter 2

Fiscal Year 2021-2022

October 1, 2021 – December 31, 2021

Lee Ann Eager	President/CEO
Sherry Neil	Chief Operating Officer
Paul Thorn	Controller
Andrea Reyes	VP of Business Development
Will Oliver	VP of Business Services
Julian Ramos	Client Services Manager
Gina Chicconi	Business Attraction Specialist
Jackie Cuevas	Business Retention Specialist
Idalia Hinojosa	Workforce Training Coordinator
Charlene Holguin	Economic Development Specialist
Raymond Jin	Data Administrator - Analyst
Marcella Lara	Business Retention Specialist
Tiffany Louk	Business Attraction Specialist
Renée Nuanes	Economic Support Specialist/Office Manager
Merritt Pacini	Executive Assistant to the CEO
Miguel Ruelas	Economic Development Specialist
Eric Salas	Economic Development Specialist
Chris Zeitz	Research Analyst

City of Clovis Quarterly Activity Report

This report summarizes the agreement requirements between the City of Clovis and the Fresno County Economic Development Corporation (EDC).

Division Mission

To market Fresno County as the premier location for business prosperity.

Fresno County EDC Services

The Economic Development Corporation serving Fresno County is a nonprofit organization established to market Fresno County as the premier location for business prosperity. We facilitate site selection for new businesses within Fresno County, and assist in the retention and expansion of businesses through our alliance with collaborative partners and resources.

The EDC agrees to the following services:

1. Provide information to the industrial and office representatives not located in the City of Clovis for recruiting new businesses and industries;
2. Assist in the development of marketing materials to attract new investments, commercial and industrial brokers, developers, and site selectors. Assist in utilizing online marketing to advance economic and community development efforts;
3. Assist existing businesses and industries that contact the EDC with information and technical assistance through the BEAR Action Network;
4. Work to foster a closer working relationship with local business associations to enhance the EDC services provided to Clovis area employers;
5. Continue acting in a leadership role in promotion of high-speed rail and promote the Clovis area for related development;
6. Inform Clovis of legislation important to the economic and community development of the region and act on their behalf;
7. Assist in identifying economic development projects on the City's behalf for the inclusion in the County of Fresno's Comprehensive Economic Development Strategy (CEDS) for possible grant funding; and
8. Provide administrative staffing at all Executive Committee, Board, and related events.

Q2 Snapshot

The EDC team conducts outreach marketing business expansion and retention services by:

- Providing an operational analysis to evaluate the health of the business. This tool offers us a thorough understanding of the appropriate referrals or resources needed for business growth or retention;
- Connecting businesses to labor subsidy programs;
- Providing education on federal/state/local tax Incentives; and
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New Business Leads	40	27	27	68%
Targeted Healthcare Engagements	20	0	0	0%
Top 50 Business List	1	0	0	0%

Clients and Businesses Contacted

A Mind Above, A
Professional Psychology
Corporation
AMA Management, Inc.
Accounting America
Anlin Industries
Auto Accessories of Clovis
California Builder Services
Central Valley Window
Cleaning
City of Clovis
Clovis Auto Shop
Clovis Bicycle Company
Clovis Chamber of
Commerce

Colorado Grill Clovis, Inc.
Debra L Winegarden, PhD
DBA Achievements
Unlimited
Elite Team Offices, Inc
High Performance Academy,
LLC
IDLS Sierra Avenue, LLC dba
Magnolia Crossing, LLC
J I.T Outsource
Kemp BBQ
Mayweather Boxing +
Fitness Clovis
Michael Angelo Custom
Painting Inc

MixMed Compounding
Pharmacy
Niacc-Avitech Technologies,
Inc.
Outdoor Environment -
Underground Boring
Systems, Inc.
Raising Canes
Roll Me Some, Inc. DBA Roll
Me Some Ice
Sequoia Home Health
Snowflake Designs
Wawona Frozen Foods

City of Clovis Economic Snapshot

Quarter 2, FY 21-22

Industrial, Office, and Retail Vacancy

This quarter in the City of Clovis, the industrial vacancy rate remained level at 0.2%, the office vacancy rate decreased from 6.9% to 6.4% and the retail vacancy rate decreased from 6.1% to 5.6%.

Q2 FY21-22	Industrial	Office	Retail
Fresno County	2.4%	8.8%	5.1%
City of Clovis	0.2%	6.4%	5.6%

Source: CoStar.com

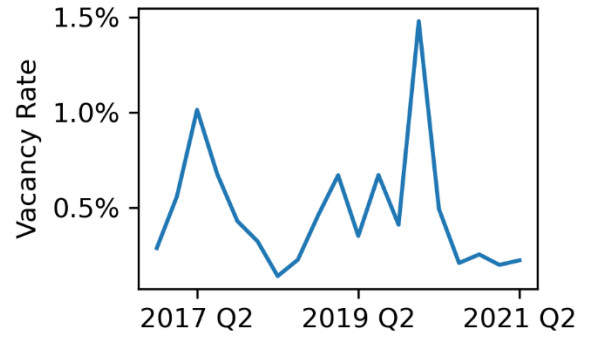
December 2021 Unemployment Rates

The unemployment rate in Clovis was 3.8% in December 2021, down from a revised 6.3% in September 2021. This compares with a non-seasonally adjusted unemployment rate of 5.4% for California and 3.9% for the nation during the same period.

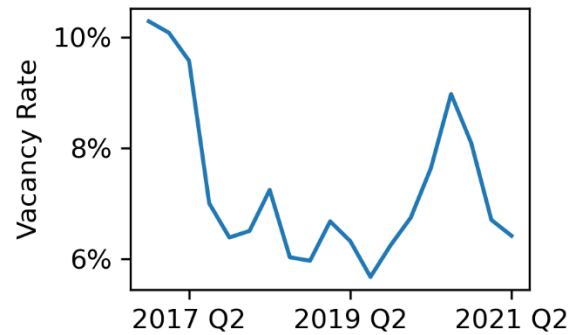
Area	Labor Force	Unemployment Rate
Fresno County	445,100	7.0%
City of Clovis	55,100	3.8%

Source: State of California Employment Development Department

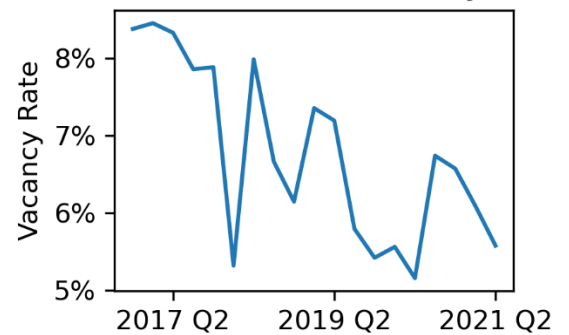
Clovis Industrial Vacancy



Clovis Office Vacancy



Clovis Retail Vacancy



Business Expansion and Attraction Leads

During the second quarter, the EDC generated **6** new business leads, responded to **3** requests for information, and performed **1** site tours.

Month	Client Number	Source	Industry	Jobs	Site Requirements	Regions
October	211004A1	Direct Lead	Industrial Gas Manufacturing	TBD	800 SF	All
	Project Philadelphia Solar	GO-Biz Lead	Heating Equipment (except Warm Air Furnaces) Manufacturing	280	200,000 sq. ft. 20.0 acres	All
November	211105A1	Local Partner Lead	Food Product Machinery Manufacturing	25	30,000 sq. ft.	All
	CCVEDC 2132	CCVEDC Lead	General Warehousing	TBD	600,000 sq. ft.	All
	211119A1	Local Partner Lead	All Other Plastics Product Manufacturing	TBD	TBD	All
December	Project Vulcan II	GO-Biz Lead	Motor Vehicle Electrical and Electronic Equipment Manufacturing	4,000	4,200,000 sq. ft. 247.0 acres	All

Requests for Information

Month	Client Number	Source	Industry	Requirement
October	RFI211015	Direct	TBD	City of Fresno asked EDC to provide sales comps for warehouses in the downtown area.
November	RFI CCVEDC2126	CCVEDC Lead	Packaging and Labeling Services	Client was looking for information on fruit co-packers.
December	RFI - 211214	Direct Lead	Multi-Family Housing	Request for multi-family housing data in downtown Fresno and Woodward park areas

Site Visits

DATE	CLIENT NUMBER	INDUSTRY	SITE OR AREA
10/27/2021	210922A1	Laminated Plastics Plate Sheet (except Packaging) and Shape Manufacturing	Metro – Fresno

The EDC has been contracted to assist the Fresno County Department of Social Services in marketing the New Employment Opportunities (NEO) program, and Ready2Hire, and identify prospective employers to hire from the pool of eligible NEO job seekers.

NEW EMPLOYMENT OPPORTUNITIES (NEO) 2020-2021

To be completed by 9/30/2021

METRIC	Actual	Contract Goal
PARTICIPATING BUSINESSES	49	150
JOB PLACEMENTS	21	200
JOB POSTINGS	332	500
JOB FAIRS	2	4
EMPLOYER TRAINING	0	4

Customized Workforce Trainings

Realizing the current labor demands among our local businesses, the EDC, Department of Social Services and educational partners have worked with industry stakeholders to develop customized trainings to fulfill today’s workforce needs. Utilizing input from various industry practitioners, each training curriculum is developed to create career pathways to meet tomorrow’s industry needs, help businesses grow, and put individuals back to work. Below is a list of customized training programs underway:

Valley Apprenticeship Connections

Pre-Apprenticeship Program. The partnership between Fresno County EDC, the Department of Social Services, and Fresno EOC is continuing to provide a 12-week program comprised of classroom and construction-based training.

John Lawson Truck Driving

Class A Truck Driving Class. The 10-week training is a partnership between Fresno County EDC, the Department of Social Services, Fresno City College, and Lawson Rock and Oil.

Central Valley Training Center

Pre-Apprenticeship Program. The partnership between Fresno County EDC, the City of Selma, and High-Speed Rail Authority will provide a 16-week program comprised of classroom and construction-based training.

High-Speed Rail

Since the program inception in 2013, the EDC has assisted 331 property owners throughout the City and County of Fresno. During this quarter our Business Development Specialist assisted 8 businesses and property owners, making contact 21 times.

Client Status	
Relocated	143
Reconfiguring	41
Relocation Pending	9
Closed	38
Existing	100
Total	331

Highlights

Sierra Vista Job Fair | City of Clovis

The EDC attended a job fair at the Sierra Vista mall (KMJ job fair). Staff engaged more than ten businesses for NEO and provided information about the other services the EDC has to offer. Two Economic Development Specialists attended the job fair on different days. The staff also handed out the EDC's annual event packets and information flyers.

Valley Made Manufacturing Summit | All

EDC Staff attended the Valley Made Manufacturing Summit hosted by the San Joaquin Valley Manufacturing Alliance and met many local manufacturers, educators, and trainers.

Washington DC Lobbying Trip | All

From October 26 – 29, Vice President of Business Services Will Oliver traveled to Washington DC to join a local delegation to advocate for Economic Development Administration grant funding. The delegation included Fresno State University President Raul Jimenez-Sandoval, UC Merced Chancellor Juan Munoz, California's Director of the California Office of the Small Business Advocate Tara Lynn Gray, Central Valley Community Foundation (CVCF) President/CEO Ashley Swearengin, CVCF Director of External Affairs Sarah Moffat and CVCF Grants and Contracts Director Karen Aceves. The purpose of the trip was to inform federal officials about Fresno County's impending Build Back Better and Good Jobs Challenge grant applications. Both applications are centered on local initiatives that were spearheaded during the 2019 DRIVE Initiative, including the Future of Food Innovation Corridor Initiative, Upskilling and Fresno's Impact Economy (previously Second Office). If awarded, over \$115 million could be made available to Central Valley projects to support agricultural technology commercialization, small business financing, just transition post-secondary education, and workforce development. The delegation met with SBA Secretary Isabel Guzman, Assistant Secretary of Commerce for Economic Development Alejandra Castillo, Deputy Assistant Secretary and Chief Operating Officer Dennis Alvord, President Biden's Special Assistant for Housing and Urban Policy Erika Poethig, USDA Undersecretary Jennifer Lester Moffitt, U.S. Senator Feinstein's Chief of Staff David Grannis, Congressman Jim Costa, Congressman David Valadao and Urban Institute President Sarah Rosen Wartell. Phase 1 of the Build Back Better Regional Challenge grant was submitted in October and the Good Jobs Challenge grant will be submitted in January 2022.

California Venue Grant Program | Fresno County

EDC staff conducted outreach calls to venues in Fresno County to relay information about the grant that may be available to them. Using data from the SBA's Shuttered Venue Operators Grant (SVOG) recipients, contacts from city leaders, and an internal search, we reached out to twenty-six businesses. Out of the twenty-six, four were not eligible and three had already submitted applications. The remaining nineteen businesses found out about the CA Venues Grant Program through Fresno EDC and will be submitting applications before the 12/7/21 deadline. EDC staff will follow-up at the end of December to get an update of their application status and promote additional services Fresno EDC has to offer.

Business Outreach | East Side

EDC staff assisted businesses in Sanger, Selma and Reedley with COVID 19 business resources. Programs discussed were the CA Rebuilding fund, PPP forgiveness and EIDL Targeted Advance. A business in

Sanger received the PPP loan and applied for the forgiveness portion of the loan and was awarded a portion of the loan to be forgiven.

Kemp BBQ | Clovis

Dom and Claire came to Fresno EDC looking for assistance relocating their BBQ restaurant from Gustine to Fresno or Clovis. EDC staff ran a search of locations in the areas that they showed interest in and set up site tours with six possible locations. Dom and Claire showed interest in one in particular but after waiting for a couple months they were not able to secure the location. Resilient in their search, a location was found in Clovis at 2220 Herndon Ave #102, Clovis, CA 93611 (formerly known as Cravings). They were able to gather all the required documentation and prepped the location in a month and held a soft opening on 12/28/21. EDC staff helped put together a job posting to find part-time employees to assist on opening day. When asked how Fresno EDC helped, Claire stated, “Fresno EDC was amazing! They have always been available to help answer any questions. Overall, just super helpful.” Once they have their restaurant dialed in they plan to advertise and have a grand opening. Picture below is of Dom and Claire (from left to right) with their first employee on opening day.



California Competes Tax Credit | Fresno County

EDC Staff conducted outreach for the upcoming application period starting January 3, 2022 through January 24, 2022. Information was sent to possible qualified businesses as well as an invitation to the Clovis Chamber of Commerce Morning Mixer that hosted speakers from Governor’s Office of Business and Economic Development (GO-Biz). EDC Staff help coordinate the collaboration along with the outreach to local businesses.

Other Activities

October

- BEA – FDI and US Economy Webinar
- ABLC- Bio economy and Sustainability Webinar
- BEA’s got Your Number: Activities of U.S. Affiliates of Foreign Multinational Enterprises Webinar
- Plug Symposium 2021: Here Comes Green Hydrogen Webinar
- Valley to Wadi: Israel’s Economic Ties with California Webinar

California Energy Commission: Pre-Solicitation Workshop for Zero-Emission Vehicles and Zero-Emission Vehicle Related Manufacturing Webinar

November

GFO-21-602 – IDEAL ZEV Workforce Pilot Webinar
Federal Infrastructure funds for Broadband Webinar

December

Supporting the Dairy Supply Chain Webinar
CoStar 2022 Predictions Webinar
American Dairy Coalition Webinar

California Competes Tax Credit Webinar
Fireside Chat with Lt. Governor of California
Ambassador Eleni Kounalakis Webinar

FY 21-22 Overview of Work Product	Deliverables	FY 2021 – 2022 Target Outcomes	
<p>Economic Development Corporation Serving Fresno County</p> <p>Contract: \$40,000</p> <p>Targeted Healthcare Contacts: \$10,000</p> <p>Staff: President & CEO Lee Ann Eager</p> <p>Sherry Neil Chief Operating Officer</p> <p>Vice President of Business Services Will Oliver</p>	<p>Retention: Targeted businesses will be contacted by a variety of methods to educate Clovis businesses on local, regional and statewide incentive programs</p> <ul style="list-style-type: none"> • Conduct Analysis to determine top 50 companies in Clovis that should be focused on for retention and expansion <p>New Business Recruitment: Provide information and tours to industrial and commercial representatives not currently located in Clovis for the purpose of recruiting new businesses and industries to the City of Clovis. Assist the City of Clovis in marketing identified industrial parks or industrial areas to new clients.</p> <ul style="list-style-type: none"> • Coordinate site tours for the purpose of business attraction and expansion. • Create and update marketing materials. • Coordinate commercial and industrial broker events for the City of Clovis. • Conduct analysis to determine expansion industries and companies to target for expansion. • Attend trade shows/missions and market Clovis. 	<p>Top 50 targeted business analysis for expansion/retention</p>	<p>In progress</p>
		<p>Respond to all City of Clovis business inquires and connect them to appropriate resources</p>	<p>28 clients and businesses contacted and 24 referrals made during Q2.</p>
		<p>20 Targeted Healthcare Contacts</p>	<p>Ongoing.</p>
		<p>2 Retention and Recovery Resource Events</p>	<p>In progress.</p>
		<p>40 new business leads</p>	<p>27 total business leads; 9 leads generated in Q2.</p>
		<p>Economic Profile including updated demographic information</p>	<p>In progress.</p>
		<p>Incentive Brochure</p>	<p>Incentive brochure to be updated in FY21-22 in cooperation with city staff.</p>



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: February 14, 2022

SUBJECT: Administration – Approval – Street Closure Requests for Special Events in Dry Creek Industrial Park.

ATTACHMENTS: 1. Matrix of proposed Dry Creek Business Park events
2. Letter to Dry Creek Business Park business and property owners

CONFLICT OF INTEREST

None.

RECOMMENDATION

That the City Council approve the requests from Rare Earth Coffee and Fresno Street Eats for street closures in Dry Creek Business Park for the calendar year 2022.

EXECUTIVE SUMMARY

Staff is requesting street closures for proposed events in Dry Creek Business Park simultaneously, and in advance, to allow for proper event planning.

BACKGROUND

Attached is a matrix of the events (Attachment “1”), sponsored by Rare Earth Coffee and Fresno Street Eats for closure of streets in Dry Creek Business Park during calendar year 2022. Each activity has a unique street closure request. The boundaries and time of street closure remain the same as 2021 for all returning events.

On February 4, 2022, a letter was delivered to Dry Creek Business Park business and property owners, soliciting comments/concerns regarding the proposed street closures. (Attachment “2”) As part of this process, staff met with business operators who may be directly impacted by the subject street closures. To date, staff has received no negative comments or concerns regarding these events.

During the City of Clovis City Council Meeting held on January 17, 2022, Council expressed concerns regarding the over saturation of special events, which require closure of streets in Old Town. Staff continues to actively encourage event promoters to consider holding events in other parts of the City of Clovis.

The City of Clovis Special Event Planning Committee has reviewed these events. Staff will continue to work with promoters on details regarding traffic control plan; ABC license application (if necessary); insurance documents; and appropriate permit applications.

FISCAL IMPACT

The City of Clovis is positively impacted by the proposed events. Local businesses benefit from large numbers of people visiting their neighborhood and the City of Clovis benefits from the increased tax revenue.

Event promoter(s) will bear the cost associated with all City of Clovis-provided services.

REASON FOR RECOMMENDATION

In previous years, more than 300,000 people have attended the various events held in Clovis annually, many of whom have returned to Clovis to patronize local businesses. Staff is requesting street closure simultaneously for all of the subject special events to ensure adequate time for event planning.

ACTIONS FOLLOWING APPROVAL

1. Staff will notify Rare Earth Coffee and Fresno Street Eats of Council's decision.
2. Staff will work with Rare Earth Coffee and Fresno Street Eats to ensure that the sponsors provide security and cleanup of the events on an individual basis.

Prepared by: Shawn Miller, Business Development Manager

Reviewed by: City Manager AA

**2022 CITY OF CLOVIS SPECIAL EVENTS
REQUEST FOR DRY CREEK BUSINESS PARK STREET CLOSURES**

DATE	TIME	EVENT	SPONSOR	STREETS
March 12 (Saturday)	9 AM to 12:00 Midnight	Crow and Wolf Anniversary Celebration	Fresno Street Eats	Park Creek Drive between Dewitt Avenue and Pollasky Avenue
April 9 (Saturday)	8 AM to 10 PM	Clovis Brewfest	Rare Earth Coffee	Pollasky Avenue between Spruce Avenue and Park Creek Drive
Third Friday of Each Month, May – November	3 PM to 12 Midnight	Clovis Street Fair	Fresno Street Eats	Park Creek Drive between Dewitt Avenue and Pollasky Avenue
June 25 (Saturday)	9 AM to 12:00 Midnight	Peach Festival	Fresno Street Eats	Park Creek Drive between Dewitt Avenue and Pollasky Avenue



CITY *of* CLOVIS

1033 FIFTH STREET • CLOVIS, CA 93612

February 4, 2022

Subject: Dry Creek Industrial Park Street Closures

Dear Clovis Residents, Merchants and Property Owners:

Attached is a list of requested street closures for special events in Dry Creek Industrial Park during calendar year 2022.

Please review this list and forward any concerns, in writing, to my attention by noon, Monday, February 14, 2022. Clovis City Council will consider these requests at their regular meeting on Monday, February 14, 2022 at 6:00 P.M.

If you have any questions or need further information, please feel free to contact me at 324-2083, or by email at shawnm@cityofclovis.com.

Sincerely,

Shawn Miller
City of Clovis



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: February 14, 2022

SUBJECT: Administration - Approval – Request from Business Organization of Old Town for Temporary Street Closure of Various Old Town Streets to Hold the Annual Glorious Junk Days Antique and Collectible Show on September 18, 2022.

ATTACHMENTS: 1. Request from Business Organization of Old Town
2. Map
3. Letter to Old Town Business and Property Owners

CONFLICT OF INTEREST

None.

RECOMMENDATION

That the City Council approve the request from Business Organization of Old Town for temporary street closure of various Old Town streets to hold the annual Fall Glorious Junk Days Antique and Collectible Show on September 18, 2022.

EXECUTIVE SUMMARY

This is an annual event but was not included in the 2022 Old Town Street Closure Requests as presented to Council on January 17, 2022; the organizers of this event were unable to submit a formal request to include at the January 17, 2022 meeting.

BACKGROUND

Attached is a request from the Business Organization of Old Town for closure of streets to hold the annual Fall Glorious Junk Days event. (Attachment 1) The boundaries and time of street closure remain the same as 2021. (Attachment 2)

A letter was sent to Old Town merchants and property owners on February 4, 2022 (Attachment 3), soliciting comments/concerns regarding this event. Staff has received no comments or concerns regarding this event.

FISCAL IMPACT

The City of Clovis is positively impacted by this and other special events. Local businesses benefit from large numbers of people visiting their neighborhood and the City of Clovis benefits from the increased tax revenue.

REASON FOR RECOMMENDATION

On February 17, 2022, City Council approved the 2022 street closures as related to special events. Those events were routine in nature as they take place annually. This event is also an annual event and has been a part of the annual street closure request for many years. Likewise, there are no changes to this event from previous years.

ACTIONS FOLLOWING APPROVAL

1. Staff will notify the applicant following of the Council's decision.
2. Staff will work with the applicant to assure that adequate security and cleanup of the event is provided.

Prepared by: Shawn Miller, Business Development Manager

Reviewed by: City Manager *AM*



Business Organization of Old Town Clovis

P.O. Box 1548
Clovis, CA 93613
559-298-5574
info@oldtownclovis.org

January 24, 2022

Shawn Miller
Business Development Manager
City of Clovis
1033 Fifth Street
Clovis, CA 93612

RE: Street Closure Request for Glorious Junk Days
Sunday, September 18, 2022

Dear Shawn,

The Business Organization of Old Town requests from the City of Clovis street closures described below and outlined on the enclosed pages be closed from 2AM until 8:00PM on Sunday, September 18, 2022.

The closure is described as follows. Pollasky from 3rd Street to 7th Street; 4th Street from Clovis to Woodworth, Fifth Street from Clovis to Woodworth and Bullard from Pollasky to Woodworth. We will make sure all streets are closed only during time needed and reopened as soon as possible.

B.O.O.T. will provide the barricades, manpower and necessary signs for both the "No Parking" and traffic control, before, during, and after each event. In addition, B.O.O.T. will be responsible for street cleanup, restroom and portable toilet maintenance and security throughout and after the event.

Thank you for your assistance in obtaining the necessary approvals for street closure.

Sincerely,

Heather Frantzich
Executive Director

Attachment 1



City of Clovis SPECIAL EVENT Worksheet

AGENDA ITEM NO. 4.

1. Name of Event: GLORIOUS JUNK DAYS
2. Date/Time of Event: SUNDAY, SEPTEMBER 18TH, 2022
7AM - 3PM
3. Will your event require street closure(s) Yes: No:
 - a. If yes, what time will the streets close and reopen? 2AM - 8PM
4. Name of Promoter: BUSINESS ORGANIZATION OF OLD TOWN
5. Contact Person: HEATHER FRANTZICH
6. Address: 516 5TH ST STE 202
CLOVIS, CA 93012
7. Phone: 559.298.5774 8. Fax: _____
9. Email: HEATHER@OLDTOWNCLOVIS.ORG 10. Cell: 559.213-8772
11. Location of Event: PALLASKY FROM 3RD - 7TH ST, 5TH ST & WOODWORTH
12. Estimated crowd size: 3000 TO CLOVIS, 4TH ST WOODWORTH TO CLOVIS & BULLARD - PALLASKY TO WOODWORTH.
13. Will you be serving alcohol? Yes: No:
 - If Yes:
 - a. Have you secured the necessary ABC Permit? Yes: No: na
 - b. Are you serving alcohol in a separate/secured area? Yes: No:
 - c. Who or what organization will be serving? _____
14. Will you, or your vendors be serving food / other refreshments? Yes: No:
 - If Yes:
 - a. What are the dimensions of the food tents? 10x20 / 10x10
15. Besides food and beverage, will there be other vendor's tents? Yes: No:
 - If Yes:
 - a. What are the dimensions of the tents? 10x10
16. How will waste / trash services be provided? Private: Public (City Services):
17. This event is: New Annual Semi Annual Other (Please Attach Description)

-See Attachment Check List on Reverse-

Glorious Junk Days

Event Dates: September 18, 2022

Event Time: 7 AM to 3 PM

Street Closure Time: 2 AM until 8 PM

Street Closure: Pollasky from 3rd Street to 7th Street; 4th Street from Clovis to Woodworth, Fifth Street from Clovis to Woodworth and Bullard from Pollasky to Woodworth.

Load In / Set Up: 4 AM to 7 AM

Load In / Breakdown: 3 PM to 8 PM

Traffic Flow: North and South on Pollasky; entering at Bullard & Pollasky. Traffic is directed by BOOT staff.

Barricade set up and pickup: B.O.O.T. hires an independent contractor to place the street closure notification signs/barricades 24 hours prior to the event. The usual contractor is Safety Net; Hector Lugo, 559-291-8000. Barricades are staged at all event entrances at 2AM. Barricades remain at all entrances until 8:00pm. At the end of the event B.O.O.T. staff move the barricades to the side of the street and Safety Net picks up the barricades the following day.

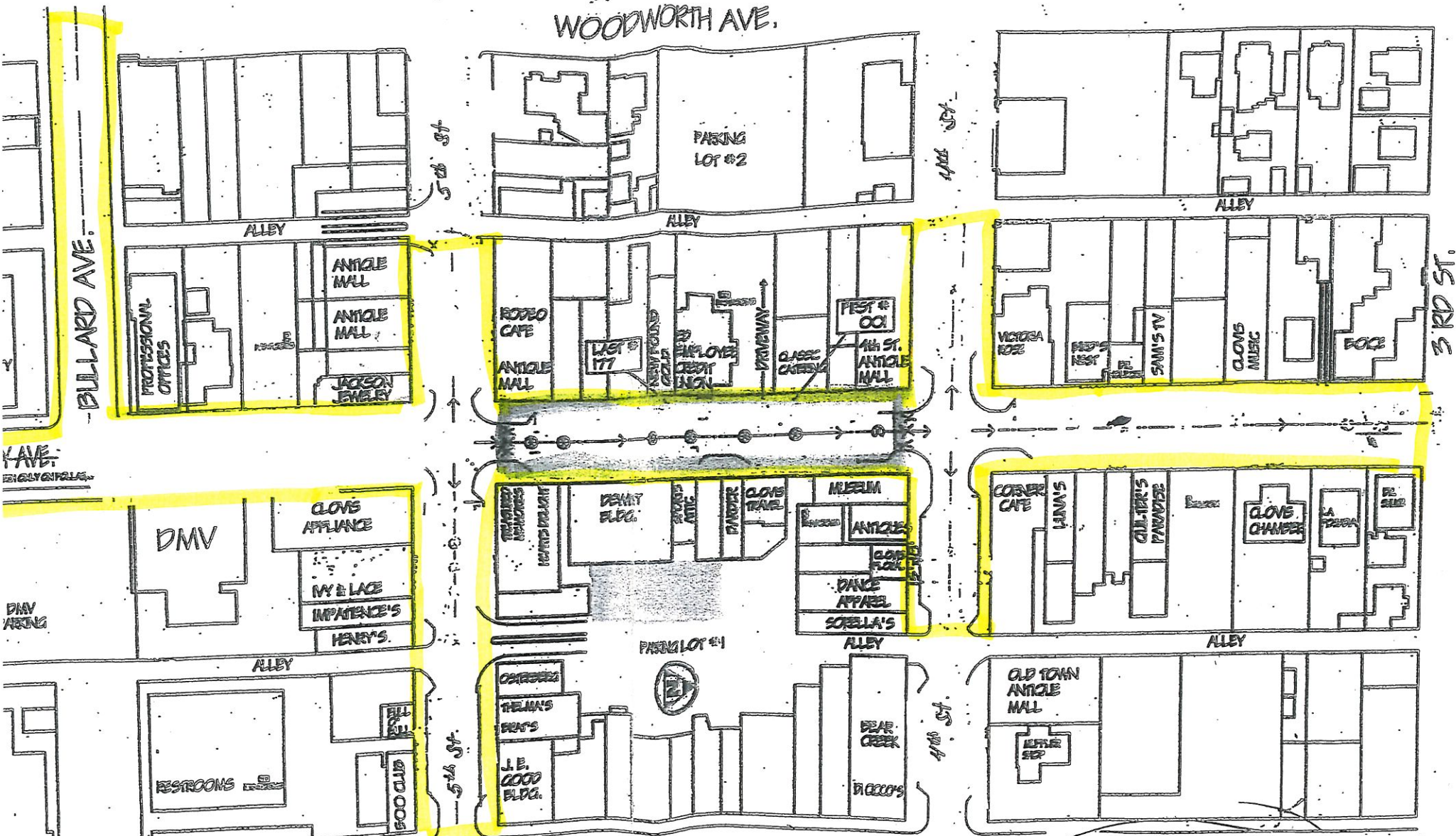
Restroom / Portable Toilet Maintenance: Public restrooms and portable toilets are cleaned and re-supplied every 30 minutes (sooner if needed) by B.O.O.T. staff. Portable toilets are contracted with Knights Portables; contact is Toni McDonald, 661-397-4116.

Trash and Street Maintenance: B.O.O.T. contracts with the City of Clovis for trash bins and refuse pick up. Crews are hired by B.O.O.T. for all maintenance duties including but not limited to trash receptacles, streets, sidewalks and flowerbeds.

Security: Not Applicable

Liability Insurance: Provided by Charity First Insurance via our agent, Ron Petersen with Valley Regional Insurance 559-647-8352. Certificates of Insurance with Endorsements are supplied to the city annually, by event.

Responsible Party: Heather Frantzich, Executive Director of B.O.O.T. at 559-298-5774 or Channing Gibson, B.O.O.T. Administrative Assistant at 559-298-5774.



Attachment 2



CITY *of* CLOVIS

1033 FIFTH STREET • CLOVIS, CA 93612

February 4, 2022

Subject: Request for Street Closure

Dear Clovis Residents, Merchants and Property Owners:

The City of Clovis has received a request from the Business Organization of Old Town to hold their annual Fall Glorious Junk Days event. The proposed date is Sunday, September 18, 2022 from 7:00 A.M. to 3:00 P.M. The closure will include:

- Pollasky Avenue between Third and Seventh Street (north of Fire Station #1)
- Fourth Street from Pollasky/Clovis Alley to Woodworth/Pollasky Alley
- Fifth Street from Pollasky/Clovis Alley to Woodworth/Pollasky Alley
- Bullard Avenue from Woodworth Avenue to Pollasky Avenue.

Please forward any concerns, in writing, to my attention by noon, Monday, February 14, 2022. Clovis City Council will consider these requests at their regular meeting on Monday, February 14, 2022 at 6:00 P.M.

If you have any questions or need further information, please feel free to contact me at 324-2083, or by email at shawnm@cityofclovis.com.

Sincerely,

Shawn Miller
City of Clovis



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: February 14, 2022

SUBJECT: General Services - Approval - Res. 22-____, Authorizing Amendments to the City's Classification and Compensation Plans to Adopt the Landfill Supervisor Classification and Salary Range of \$7,875 to \$9,572 per month.

ATTACHMENTS: 1. Resolution Classification Addition

CONFLICT OF INTEREST

None.

RECOMMENDATION

For City Council to approve a resolution amending the City's classification and compensation plans to adopt the Landfill Supervisor classification and salary range of \$7,875 to \$9,572 per month.

EXECUTIVE SUMMARY

Following the evaluation of work assignments within the Public Utilities Department, a Landfill Supervisor position was added to the FY 21-22 budget during the budget process. The Landfill Supervisor classification now needs to be added to the City's Classification and Compensation Plans so recruitment for the position may occur. Modification of the City's Classification and Compensation Plans requires the City Council's approval.

BACKGROUND

During the FY 21-22 budget process, the Public Utilities Department determined the need to create a separate Landfill Supervisor classification. One Landfill Supervisor position was added to the Public Utilities Department FY 21-22 Position Allocation Plan but now requires a classification in order to recruit for and fill the position.

Staff is proposing that the Landfill Supervisor classification be added to reflect the responsibilities and job duties that are required in the Public Utilities Department. This position will report to the Solid Waste Manager. The incumbent will be responsible for supervising personnel and directing the landfill operations for the City.

It is recommended that the salary range for the Landfill Supervisor be comparable to other management positions with a similar level of responsibility. The recommended new salary range would be \$7,875 to \$9,572 per month. The Landfill Supervisor will be assigned to the management group. The new classification and salary range reflect the current needs of the City.

FISCAL IMPACT

The salary and related benefit costs of this proposed classification for the remainder of the fiscal year would be approximately an additional \$38,000. The additional costs were budgeted in the FY 21-22 Public Utilities Department budget.

REASON FOR RECOMMENDATION

The addition of the Landfill Supervisor classification to the City's classification and compensation plans provides a detailed classification description and allows for the recruitment of the new position. Modification of the City's classification and compensation plans requires City Council approval.

ACTIONS FOLLOWING APPROVAL

Personnel staff will update the City's classification and compensation plans with the addition of the Landfill Supervisor classification.

Prepared by: Lori Shively, Personnel/Risk Manager

Reviewed by: City Manager *AS*

RESOLUTION 22-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLANS BY ADOPTING A LANDFILL SUPERVISOR CLASSIFICATION

WHEREAS, it has been determined that the City has a need for a Landfill Supervisor classification to provide the necessary support to supervise landfill operations; and

WHEREAS, it has been determined that the appropriate salary range for the Landfill Supervisor classification is \$7,875 to \$9,572 per month; and

WHEREAS, it has been determined that it is appropriate to assign the Landfill Supervisor classification to the Management Group.

NOW THEREFORE, BE IT RESOLVED, that the City of Clovis will modify the City's FY 21-22 Classification and Compensation Plans to include the Landfill Supervisor classification (Attachment A) with a monthly salary range of \$7,875 to \$9,572 per month.

* * * * *

The foregoing Resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on February 14, 2022, by the following vote to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Dated: February 14, 2022

Mayor

City Clerk

CITY OF CLOVIS
LANDFILL SUPERVISOR
Monthly Salary: \$7,875 to \$9,572

DEFINITION

Under general direction, plan, supervise, coordinate, assign, monitor and participate in landfill operations in support of the Public Utilities Department and perform related work as required.

CLASS CHARACTERISTICS

Reporting to the Solid Waste Manager, this position serves as supervisor of landfill operations and may assist with Solid Waste operations as needed. The incumbent acts with a high degree of independence of action in the assigned areas of responsibility. Direction provided to incumbent consists of the assignment of responsibility for attaining department objectives according to management direction and policy guidelines. Incumbent is expected to develop methods and procedures for solving problems encountered. Most of the work is not reviewed directly by a supervisor except where it involves a deviation in policy, an inconsistency in application with departmental procedures and/or the implementation of new methods and procedures. When work is reviewed, the review is directed toward final outcome and results. Incumbents may be assigned to work outside their regular shift and may be required to work weekends and holidays.

EXAMPLES OF DUTIES

Supervise and direct landfill operations and personnel; participate fully in all aspects of landfill operations, including assigned work of daily soil excavation, compaction and covering of refuse and other earthwork site construction activities; generate, review, recommend and administer approved contracts and consultants associated with landfill operations; train and instruct employees in equipment operations, field work and safety practices; oversee all landfill functions with regard to state and federal regulations, City ordinances and departmental rules, regulations, and policies, as prescribed by the department head and enforced by the manager; serve as a departmental representative for solid waste associations that address local, state and federal concerns; read and interpret engineering reports and detailed construction drawings for project and program implementation at the landfill; when necessary, explain ordinance and departmental regulations to the public; confer with the manager concerning related problems and suggest new methods or procedures; maintain time cards and other division records; conduct safety meetings; assist with and conduct employee performance evaluations; advise on hiring recommendations; recommend and assist in the discipline of subordinate employees; may serve as acting manager; distribute assigned work to subordinate personnel; instruct assigned staff in work methods; advise immediate supervisor of employee performance problems; report to manager problems encountered in the assigned work and progress in completing work assignments; conduct studies and investigations and prepare reports of findings and recommendations; assist supervisor in the preparation and administration of the refuse disposal budget; requisition supplies and replacement parts; operate City vehicles; participate in the landfilling of refuse; respond to emergency calls during or after normal duty hours; and perform related work as required.

ATTACHMENT A

TYPICAL QUALIFICATIONS

LICENSE REQUIRED

- Possession of a valid class B California driver's license with a good driving record and with air brake, hazardous materials, and tanker endorsements.
- Certificates: Shall obtain HAZWOPER 40 Hour Certificate and Manager of Landfill Operations (MOLO) certificate within the 1-year probationary period.

EDUCATION AND EXPERIENCE

Education:

- Graduation from an accredited college or university with possession a Bachelor's Degree in Construction Management, Industrial Technology, Civil Engineering, Public Administration or a closely a related field.
- Experience over and above the six years' experience requirement stated below may be substituted for up to two years' education in the following manner:
 - An additional three years' experience in the operation of heavy equipment used at landfills, in road construction or other earthwork construction may be substituted for one year of education equivalent to 30 semester units (a total of nine years' experience).
 - An additional six years' experience in the operation of heavy equipment used at landfills, in road construction or other earthwork construction may be substituted for two years of education equivalent to 60 semester units (a total of twelve years' experience).

And

Experience:

- Six (6) years of full-time work experience in the operation of heavy equipment used at landfills, in road construction or other earthwork construction.
- Minimum of two years' work experience must be in a lead or supervisory/management capacity.

QUALIFICATIONS

Knowledge of:

- Applicable laws, codes and regulations pertaining to the methods of sanitary landfill operations;
- Landfill heavy equipment;
- Earthwork and roadway construction practices;
- Basic math;
- Record keeping;
- Proper methods, materials, tools and equipment used in the sanitation trade;
- General principles of supervision and training;
- Appropriate safety precautions and procedures;
- Hazardous materials identification;
- Industry-accepted techniques in landfill operations;

- Local, state and federal laws and regulations related to sanitary landfill operations.

Ability to:

- Supervise, train, organize and review the work of staff;
- Identify and assess safety concerns for personnel and the public;
- Understand and implement excavation and earthwork practices and regulations as they pertain to landfill operations;
- Operate and train others in the operation of landfill equipment, including crawler dozers, landfill compactors, self-elevating scrapers, water trucks and motor graders;
- Prepare oral and written reports;
- Read, understand and implement detailed design blueprints related to landfill design and construction;
- Set, read, understand and interpret survey stakes as they relate to earthwork and roadway construction;
- Read, write and perform mathematical calculations at the level required for successful job performance;
- Perform minor maintenance and service to landfill equipment;
- Inspect equipment for safety purposes and ensure that it is operated in a safe and efficient manner;
- Interpret and enforce safety standards;
- Maintain moderately complex records;
- Understand pertinent procedures and functions quickly and apply them without immediate supervision;
- Plan, assign and monitor the work of subordinates;
- Operate a vehicle, observing legal and defensive driving practices;
- Understand and carry out oral and written instructions;
- Establish and maintain effective relationships with all organizational levels as well as with the public;
- Adhere to, administer, and promote City regulations, policies and programs.

SUPPLEMENTAL INFORMATION

PHYSICAL DEMANDS AND WORKING CONDITIONS

- Strength: Heavy work – frequent lifting and/or carrying of objects weighing up to 50 pounds, with occasional lifting and/or carrying and/or pushing up to 100 pounds.
- May be required to: work in inclement weather, including sun, cold and rain; wear protective apparel, including goggles, face protectors, noise insulator and steel bottom shoes; work around potentially hazardous material and substances. Some assigned areas are exposed to extreme heat, humidity, noise, traffic and mechanical hazards of machinery, fumes, odors and dust from construction and maintenance equipment.
- Incumbent may be required to attend periodic evening meetings.
- Incumbent is required to travel within and out of City to attend meetings.
- The position is designated as confidential under the Meyers-Millas Brown Act and is an exempt employee under the Fair Labor Standards Act.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: February 14, 2022

SUBJECT: Public Utilities – Approval – Bid Award for SPR 1987-048A, 79 N. Sunnyside Avenue Site Improvements, and Authorize the City Manager to Execute the Contract on Behalf of the City.

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

None.

RECOMMENDATION

1. For the City Council to award the contract for SPR 1987-048A, 79 N. Sunnyside Avenue site improvements, to Central Valley Asphalt in the amount of \$338,142.00; and
2. For the City Council to authorize the City Manager to execute the contract on behalf of the City.

EXECUTIVE SUMMARY

Staff is recommending that Council authorize the City Manager to award the contract to Central Valley Asphalt in the amount \$338,142.00.

This project is for parking lot modifications and ADA improvements for the City of Clovis site located at 79 N. Sunnyside Avenue. The work consists of site demolition, reconstruction of the parking lot pavement, trash enclosure, drive approaches, curb, gutter, curb ramp, chain-link fencing, chain-link fence rolling gate and automatic rolling gate, landscape and irrigation, and furnishing and installation of a covered parking structure

BACKGROUND

The following is a summary of the bid results of January 25, 2022:

BIDDERS**BASE BIDS**

Central Valley Asphalt	\$338,142.00
Dave Christian Construction Co., Inc.	\$398,250.00
Emmett's Excavation, Inc.	\$412,097.00
Clean Cut Landscape, Inc.	\$423,525.00
Seal Rite Paving & Grading	\$444,958.80
Bush Engineering, Inc.	\$454,713.35
Caliber Contracting Services, Inc.	\$461,964.93
ENGINEER'S ESTIMATE	\$285,080.00

All the bids were examined and found to be in order, with the exception of a few minor clerical errors that were corrected to establish the appropriate base bid. Staff has validated the lowest responsive bidder's contractor's license

FISCAL IMPACT

This project is budgeted in the 2021-2022 Community Investment Program.

REASON FOR RECOMMENDATION

Central Valley Asphalt is the lowest responsible bidder.

ACTIONS FOLLOWING APPROVAL

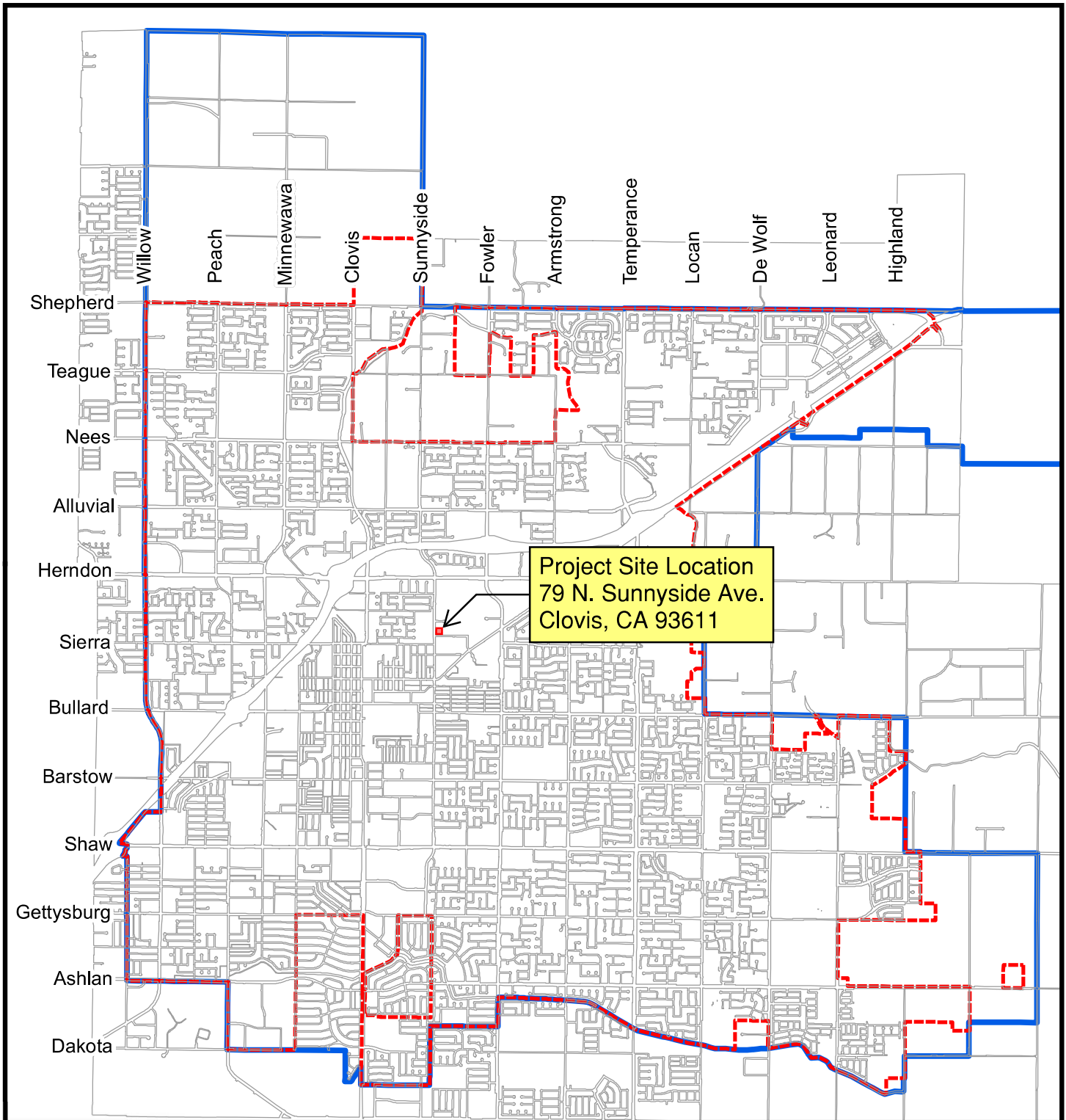
The contract will be prepared and executed, subject to the Contractor providing performance security that is satisfactory to the City.

Prepared by: Sarai Yanovsky, Civil Engineer

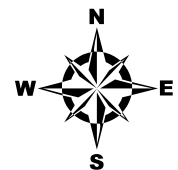
Reviewed by: City Manager *AH*

VICINITY MAP

SPR 1987-048A 79 N. Sunnyside Ave. Site Improvements



ATTACHMENT 1





CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: February 14, 2022

SUBJECT: Public Utilities – Approval – Res. 22-____, Approving and Authorizing Staff to Proceed with Submitting a Notice of Intent to CalRecycle to Comply with SB 1383 Regulations via SB 619.

ATTACHMENTS: 1. Resolution of a Notice of Intent to Comply with SB 1383

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to approve by Resolution and authorize staff to proceed with a submission of an application to CalRecycle of a Notice of Intent to Comply with SB 1383, following the process laid out by SB 619.

EXECUTIVE SUMMARY

Jurisdictions are required to implement SB 1383 beginning January 1, 2022. SB 1383, often referenced as California's Short-Lived Climate Pollutant Reduction Law, establishes methane reduction targets for California and sets goals to reduce disposal of organics in landfills. As jurisdictions are preparing to implement the law, many local governments are facing challenges due to the COVID-19 pandemic. In response, Governor Newsom signed SB 619 (Laird, Chapter 508, Statutes of 2021) into law to support local governments as they design and implement successful organic waste recycling programs throughout the state. The law authorizes CalRecycle to waive civil penalties if a jurisdiction submits a Notice of Intent to Comply for some or all of the regulatory requirements and successfully implements a plan to correct violations.

While the City of Clovis already offers organic waste recycling services, there are many more requirements in the law that will take time to implement. SB 619 offers jurisdictions an alternative schedule to implement, avoiding potential violations and penalties. In order to qualify, the application must be approved by Council. City staff has worked with CalRecycle staff on the application and continues to work with our recycling and greenwaste services provider, Republic Services, on implementation of SB 1383 requirements.

BACKGROUND

Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016) was passed in 2016 as part of California's larger strategy to combat climate change. This law is the largest and most prescriptive waste management legislative update in California since AB 939.

An important part of the California Department of Resources Recycling and Recovery's (CalRecycle) mission is to increase the diversion of organic materials away from landfills and toward the production of value-added products such as compost, fertilizers, and biofuels. Organic waste accounts for more than a third of the material in California's waste stream. Greenhouse gas emissions caused by the decomposition of organic material in landfills contribute to global climate change. Reducing the amount of organic material sent to landfills is part of the AB 32 (California Global Warming Solutions Act of 2006) Scoping Plan, is fundamental to the Air Resources Board's Short-Lived Climate Pollutant strategy, and is one of California's strategies for reaching the statewide 75 percent recycling goal. Collecting and processing organic materials, particularly food, is also the focus of AB 1826, which mandated such efforts beginning April 1, 2016. Jurisdictions, organic waste and edible food generators, facilities, and haulers are all subject to penalties for non-compliance. Each jurisdiction is responsible for conducting appropriate oversight of hauler collection, processing contractors, consultants, and other third-party entities, as applicable. Ultimately, each jurisdiction is accountable for generators' compliance, and CalRecycle may fine or penalize the jurisdiction for non-compliant programs beginning in 2022.

Staff is working with Republic Services, our organics waste services provider, for full implementation of SB 1383 to comply with regulations that were not stipulated in our current contract.

FISCAL IMPACT

The Notice of Intent to comply with SB 1383 has no immediate fiscal impact; however, implementation of the mandated program will place additional cost burdens on the City. Costs associated with implementation of SB 1383 will be borne by the Community Sanitation Fund and are not fully known at this time. Staff anticipates Republic Services will be providing a request to the City, per the contract requirements, to increase charges paid by the City for full programmatic implementation of SB 1383. Staff is continuing to evaluate the costs to the City for the State-mandated required implementation of SB 1383 and will provide that information to Council during the budget process. Any additional costs to Republic Services outside of the typical consumer price index increases allowed in the contract must be approved by Council.

Submittal of the Notice of Intent to Comply with SB 1383 allows the City to forego violations that carry a financial penalty.

REASON FOR RECOMMENDATION

Approval of the Resolution authorizes an alternate implementation schedule for SB 1383. By doing so, the City may avoid violations and penalties that may be associated with any failures to implement SB 1383 requirements.

ACTIONS FOLLOWING APPROVAL

Staff will submit the application prior to the March 1, 2022, deadline. CalRecycle will respond in writing to a jurisdiction within 45 business days of receiving its notice with an approval, disapproval, request for additional information, or timeline for a decision on approval or disapproval.

Prepared by: Ivette Rodriguez, Solid Waste Manager

Reviewed by: City Manager AA

RESOLUTION 22-__**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AND AUTHORIZING STAFF TO PROCEED WITH SUBMITTING A NOTICE
OF INTENT TO CALRECYCLE TO COMPLY WITH SB 1383 REGULATIONS**

WHEREAS, CalRecycle, in consultation with the California Air Resources Board, has adopted regulatory requirements (Regulations), consistent with the mandate of Senate Bill 1383 (Lara, 2016), that are designed to achieve the organic waste reduction goals established in Section 39730.6 of the Health and Safety Code through a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2025; and

WHEREAS, the City of Clovis is a local jurisdiction required to comply with the Regulations; and

WHEREAS, the City of Clovis is or expects to be facing continuing violations of the Regulations commencing during the 2022 calendar year; and

WHEREAS, Senate Bill 619 (Laird, 2021), through amendments to Section 42652.5 of the Public Resources Code (Statute), created a mechanism called a Notice of Intent to Comply through which a local jurisdiction may secure administrative civil penalty relief from any continuing violations of the Regulations for the 2022 calendar year and may be eligible for a broader and longer-term regulatory compliance path, including suspended administrative civil penalties, through a corrective action plan; and

WHEREAS, the City of Clovis is a local jurisdiction authorized by the Statute to submit a Notice of Intent to Comply for CalRecycle approval; and

WHEREAS, CalRecycle shall approve a Notice of Intent to Comply that is duly adopted by the jurisdiction by formal written resolution and meets the requirements of the Statute.

NOW, THEREFORE, BE IT RESOLVED, that the City Council by and through its City Manager hereby formally adopts the Notice of Intent to Comply, attached as "Attachment A."

The City Council hereby authorizes and directs City Manager or designee, on its behalf, to submit the Notice of Intent to Comply attached as "Attachment A" to CalRecycle for approval pursuant to the Statute.

By submitting the Notice of Intent to Comply pursuant to and subject to the above referenced requirements, the City of Clovis represents and certifies that it will implement the proposed actions to remedy the violations according to the proposed schedule as approved by CalRecycle and in accordance with the Statute and Regulations.

The City of Clovis by and through its City Manager also acknowledges and agrees to comply with any maximum compliance deadline in any corrective action plan that CalRecycle, in its sole discretion, determines to be necessary and appropriate under the circumstances for the correction of any violation(s) of the Statute and Regulations identified in its Notice of Intent to Comply.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on February 14, 2022, by the following vote, to wit.

AYES:
NOES:
ABSENT:
ABSTAIN:

DATED: February 14, 2022

Mayor

City Clerk

Notification of Intent to Comply

CalRecycle is providing this optional form as a convenience to assist jurisdictions (counties, cities, a county and city, or special districts providing solid waste collection services) for purposes of submitting a notification of intent to comply to CalRecycle [see Public Resources Code (PRC) section 42652.5(c)].

A jurisdiction may submit a notification of intent to comply if it is facing continuing violations of the Short-lived Climate Pollutants: Organic Waste Reductions requirements in Title 14 California Code of Regulations (14 CCR). The written notification of intent to comply, adopted by resolution of the jurisdiction's governing body, shall be sent to CalRecycle no later than **March 1, 2022**, to NOIC@CalRecycle.ca.gov.

A jurisdiction shall, at minimum, include the following in its notification:

1. A description, with specificity, of the continuing violations.
2. A detailed explanation of the reasons, supported by documentation, why the local jurisdiction is unable to comply.
3. A description of the impacts of the COVID-19 pandemic on compliance.
4. A description of the proposed actions the local jurisdiction will take to remedy the violations within the timelines established in 14 CCR section 18996.2 with a proposed schedule for doing so. The proposed actions shall be tailored to remedy the violations in a timely manner.

Upon approval by CalRecycle of a jurisdiction's notification and implementation of the intent to comply, a jurisdiction may be eligible for both of the following:

1. Administrative civil penalty relief for the 2022 calendar year pursuant to PRC section 42652.5(d).
2. A corrective action plan pursuant to 14 CCR section 18996.2.
 - a. CalRecycle may address through a corrective action plan any violations disclosed in a jurisdiction's notification that will take more than 180 days to correct. In this situation, the proposed actions and schedule in the jurisdiction's approved notification will be in effect until a corrective action plan is issued.

CalRecycle will respond in writing to a jurisdiction within 45 business days of receiving its notification with an approval, disapproval, request for additional information, or timeline for a decision on approval or disapproval. CalRecycle will include details about why a jurisdiction did not meet the requirements for a Notification of Intent to Comply when disapproving the jurisdiction's notification.

Please **clearly print or type** responses. Attach additional pages as necessary.

AGENDA ITEM NO. 7.

Jurisdiction Name:City of Clovis

County:Fresno

Person Completing the Form:

First Name:Ivette

Last Name:Rodriguez

Title:Solid Waste Manager

Mailing Address:155 N. Sunnyside Ave

City:Clovis

Zip Code:93611

Email Address:ivetter@ci.clovis.ca.us

Phone Number:559-324-2612

1. Select using the check boxes below or write in the continuing violations for each applicable regulatory section. For each selection, please describe the specific violations related to the regulatory section.

Example:

- (B) 14 CCR section 18984.1 Three-Container Organic Waste Collection Services
- i. Not implementing mandatory residential foodwaste collection for all residents. Note: City already provides mandatory greenwaste collection to all residents*
 - ii. Not implementing mandatory commercial organics collection for all businesses under 2 cubic yards. Note: City already provides mandatory commercial organics collection to all businesses 2 cubic yard or more.*

Disclaimer: The list of possible continuing violations below is not inclusive of all potential violations of the regulations.

(A) 14 CCR section 18984 Combined Organic Waste Collection Services. *This requirement is not included since the requirements are further specified in sections 18984.1-18984.11.*

- (B) 14 CCR section 18984.1 Three-Container Organic Waste Collection Services
- (C) 14 CCR section 18984.2 Two-Container Organic Waste Collection Services
- (D) 14 CCR section 18984.3 Unsegregated Single Container Collection Services
- (E) 14 CCR section 18984.4 Recordkeeping Requirements for Compliance with Organic Waste Collection Services
- (F) 14 CCR section 18984.5 Container Contamination Minimization
- (G) 14 CCR section 18984.6 Recordkeeping Requirements for Container Contamination Minimization
- (H) 14 CCR section 18984.7 Container Color Requirements
- (I) 14 CCR section 18984.8 Container Labeling Requirements
- (J) 14 CCR section 18984.11 Waivers Granted by a Jurisdiction
- (K) 14 CCR section 18985.1. Organic Waste Recovery Education and Outreach.
- (L) 14 CCR section 18985.2. Edible Food Recovery Education and Outreach
- (M) 14 CCR section 18985.3. Recordkeeping Requirements for a Jurisdiction's Compliance with Education and Outreach Requirements
- (N) 14 CCR section 18988.1. Jurisdiction Approval of Haulers and Self-Haulers
- (O) 14 CCR section 18988.3. Self-haulers of Organic Waste
- (P) 14 CCR section 18988.4. Recordkeeping Requirements for Compliance with Jurisdiction Hauler Program
- (Q) 14 CCR section 18989.1. CALGreen Building Codes
- (R) 14 CCR section 18989.2 Model Water Efficient Landscape Ordinance

- (S) 14 CCR section 18991.1. Jurisdiction Edible Food Recovery Program
- (T) 14 CCR section 18991.2. Recordkeeping Requirements for Jurisdiction Edible Food Recovery Program
- (U) 14 CCR section 18992.1. Organic Waste Recycling Capacity Planning
- (V) 14 CCR section 18992.2. Edible Food Recovery Capacity
- (W) 14 CCR section 18993.1. Recovered Organic Waste Product Procurement Target
- (X) 14 CCR section 18993.2. Recordkeeping Requirements for Recovered Organic Waste Procurement Target
- (Y) 14 CCR section 18993.3. Recycled Content Paper Procurement Requirements
- (Z) 14 CCR section 18993.4. Recordkeeping Requirements for Recycled Content Paper Procurement
- (AA) 14 CCR section 18994.2. Jurisdiction Annual Reporting
Note: This requirement is not included since jurisdictions are still expected to report to CalRecycle.
- (BB) 14 CCR section 18995.1. Jurisdiction Inspection Requirements
Note: Section 18995.1(a)(1) should not be included because a jurisdiction should already be completing this action due to the requirements of PRC Chapter 12.9 (commencing with Section 42649.8)
- (CC) 14 CCR section 18995.2. Implementation Record and Recordkeeping Requirements
- (DD) 14 CCR section 18995.3. Jurisdiction Investigation of Complaints of Alleged Violations
Note: This requirement is not included since jurisdictions are still expected to investigate complaints.
- (EE) 14 CCR section 18995.4. Enforcement by a Jurisdiction

Use the check box(es) below to write in the continuing violations for any regulatory section(s) not reflected above and describe the specific violations related to the regulatory section.

Example:

- (1) (Type regulatory section number) (Type regulatory section title)
i. Describe the specific violations related to the regulatory section
- (1) (B)14 CCR section 18984.1 Three-Container Organic Waste Collection Services. i. Not implementing all applicable commercial (less than 2cy) and multi-family (adding food waste collection) organic collection locations and the associated requirements, such compliant
- (2) (F) 14 CCR section 18984.5 Container Contamination Minimization. i. Not including all commercial accounts 2cy or more within the City's current Contamination minimization program. Note: The City will include language regarding notifications to customer regarding
- (3) (J) 14 CCR section 18984.11 Waivers Granted by a Jurisdiction. i. No waivers implemented. Note: City will implement and grant the following type of waivers if customers follows all guidelines: De Minimis Waivers and Space Waivers.
- (4) (L) 14 CCR section 18985.2 Edible Food Recovery Education and Outreach. i. No outreach has been sent out to the edible food recovery organizations by the City. Note: The City will create fliers and provide each of the identified edible food organizations and generators the
- (5) (W) 14 CCR section 18993.1 Recovered Organic Waste Product Procurement Target. i. Not fully implemented. Note: The City currently procures organic waste and has a good program in place. The City plans to increase Organic Waste Products and also analyze the

2. A detailed explanation of the reasons why the jurisdiction is unable to comply, support documentation, if applicable.

The City's current contract does not include SB 1383 implementation and currently going through negotiations with hauler. The pandemic has also made compliance with SB 1383 difficult to take on while having to navigate through new and changing laws to keep staff healthy and safe. In addition, a reduction of City staff in Solid Waste placed hardships requiring added challenges to daily operations. There was a need for additional time due to the distraction and undertake of pandemic in order to fully understand the entire law and plan for a budget to include added cost to support compliance of SB 1383.

3. A description of the impacts of the COVID-19 pandemic on compliance.

Fully implementing the various facets of SB 1383 regulations during a pandemic has been difficult to accomplish. The added tasks and tracking and learning how to deal with the pandemic and new policies of the City to stay safe has taken an added time daily to the work load and challenge of learning about this new law and implementation requirements under each regulatory section. In addition, local businesses were closing down and dealing with financial hardships, owners were not willing to add additional services including organics. Customers were canceling services to save cost to avoid closing down. In addition to budgetary constraints with higher cost incurred in the last two years.

4. Provide a description of the proposed actions the jurisdiction will take to remedy the violations with a proposed schedule for completing each action. The proposed actions shall be tailored to remedy the violations in a timely manner. See optional format below.

The City of Clovis is currently working on current franchise hauler to negotiate contract to include SB 1383 implementation, monitoring and tracking of commercial and multi-family accounts to meet compliance under SB 1383. The City's Solid Waste Manager is working with Fresno County Department of Public Works and Planning to partner with edible food recovery organization to track donations from the Tier 1 and Tier 2 generators. The City will create education materials to delivery to Tier 1 edible food generators and provide information regarding compliance under SB 1383. The City is also planning to partner with Fresno County Department of Public Health to assist with monitoring commercial accounts and planning to work with City Code Enforcement Department to monitor residential accounts for compliance and contamination reduction. The City has applied for the SB 1383 grant to purchase new organics containers and to fund education materials and outreach. The City has also written SB 1383 ordinance to enforce SB 1383 compliance and all sections of law. The City will be working diligently with each of it's partners to meet goals and deadlines and to fully implement all programs and requirements of SB 1383.

I hereby certify under penalty of perjury that the information provided herein is true and correct to the best of my knowledge.

Ivette Rodriguez

Solid Waste Manager

February 3, 2022

Ivette Rodriguez

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Signature	Printed Name	Title	Date

Description of the proposed actions with proposed schedules the jurisdiction will take to address violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

Regulatory Requirement and Description	
Action	Proposed Schedule
TASK 1: Purchase organic collection containers for commercial and multi-family accounts that are required under SB 1383 section 18984.1. Including education and outreach and labeling requirements 18984.8	Date to be completed: December 2023
TASK 2: Provide education and outreach to edible food organizations with information regarding compliance with SB 1383 section 18985.2	Date to be completed: October 2022
TASK 3: Implement tracking process for monitoring SB 1383 programs in addition to implementing new contamination reduction program required under section 18984.5 and 18984.6.	Date to be completed: December 2022

Regulatory Requirement and Description	
Action	Proposed Schedule
TASK 1: Create waivers for specific generators that do not meet the threshold of generation under SB 1383 18984.11. Including outreach to all self-haulers permitted with the City to comply with SB 1383 section 18985.3.	Date to be completed: December 2022
TASK 2: The City will evaluate current purchases of organic materials and increase to meet procurement target annually.	Date to be completed: December 2022

Add Attachment

EXAMPLE

Regulatory Requirement: (B.i.) 14 CCR section 18984.1 Three-Container Organic Waste Collection Services	
Description: Not implementing mandatory residential foodwaste collection for all residents. Note: City already provides mandatory greenwaste collection to all residents	
Action	Proposed Schedule
TASK 1: <i>Purchase two additional collection trucks and modify collection routes</i>	Date to be completed: 4/7/2022
TASK 2: <i>The city will work with its hauler to find a facility to accept mixed organic waste.</i>	Date to be completed: 4/14/2022

Regulatory Requirement: (B.ii.) 14 CCR section 18984.1 Three-Container Organic Waste Collection Services	
Description: Not implementing mandatory commercial organics collection for all businesses under 2 cubic yards. Note: City already provides mandatory commercial organics collection to all businesses 2 cubic yard or more.	
Action	Proposed Schedule
TASK 1: <i>Purchase two additional collection trucks and modify collection routes</i>	Date to be completed: 4/21/2022
TASK 2: <i>The city will work with its hauler to acquire and distribute appropriate containers to all commercial accounts. The city will obtain monthly reports from the hauler to monitor full distribution of carts.</i>	Date to be completed: 4/28/2022

Description of continuing violations for each regulatory section:

(B)14 CCR section 18984.1. Three-Container Organic Waste Collection Services. i. Not implementing all applicable commercial (less than 2cy) and multi-family (adding food waste collection) organic collection locations and the associated requirements, such as compliant containers. Note: City has already mandatory green and food waste collection to all residential locations. City is implementing mandatory service for the remaining 86 businesses over 2cy.

(E) 14 CCR section 18984.4. Record keeping requirements for Compliance with Organic Waste Collection Service. i. The city will implement record keeping for added organic commercial and multi-family accounts that are under the 2cy and record keeping of information required under this section. Note: The City does keep record of site visits and monitoring of accounts and will include commercial and multi-family accounts covered under this section.

(F) 14 CCR section 18984.5. Container Contamination Minimization. i. Not including all commercial accounts 2cy or more within the City's current Contamination minimization program. Note: The City will include language regarding notifications to customer regarding compliance under this section and correction guidance and violations. The City has a plan for route reviews. In addition new ordinance has violations included for contamination.

(G) 14 CCR section 18984.6. Record Keeping Requirements for Container Contamination. i. Not implementing required Container Contamination requirements. Note: The city will implement Record Keeping report to comply with requirements under this section to assist in tracking and reducing contamination.

(H) 14 CCR section 18984.7 Container Color Requirements. i. City's current hauler will need to order new organics collection containers and color the organics containers that are not the correct color required under this section. Note: The City's residential single stream collection program does have the proper container colors implemented.

(I) 14 CCR section 18984.8. Container labeling. i. Does not have labels on all containers to include the list of acceptable materials. Note: The City will work with hauler to place correct container labels with education with graphics of materials accepted.

(J) 14 CCR section 18984.11. Waivers Granted by a Jurisdiction. i. No waivers implemented. Note: City will implement and grant the following type of waivers if customers follows all guidelines: De Minimis Waivers and Space Waivers.

(K) 14 CCR section 18985.1. Organic Waste Recovery Education and Outreach. i. Not implementing required education and outreach for the remaining generators that need mandatory organic waste recovery services or the commercial edible food generators. Note: City has enhance educational program for SB 1383 programs and will continue to

improve information on City website, social media pages and printed fliers tailored to each type of customer.

(L) 14 CCR section 18985.2 Edible Food Recovery Education and Outreach. i. No outreach has been sent out to the edible food recovery organizations by the City. Note: The City will create fliers and provide each of the identified edible food organizations and generators the proper outreach for compliance. In addition to listing the food recovery servicing operating in the City on the City website.

(M) 14 CCR Section 18985.3 Record Keeping Requirements for a Jurisdiction's Compliance with Education and Outreach Requirements. I. Not implementing record keeping the 2cy or less commercial and multi-family accounts. Note: The City has started tracking education and outreach to each business regarding SB 1383 through business license mailer. The City has added new SB 1383 education on City Website, social medial pages and created new flyers.

(N) 14 CCR section 18988.1. Jurisdiction Approval of Haulers and Self Haulers. i. Not informing non C&D haulers of SB 1383. Note: City will implement notice with any business applying for permit to receive SB 1383 information to comply with hauling in the City of Clovis.

(P) 14 CCR section 18988.4. Record Keeping for Compliance with Jurisdiction Hauler Program. i. Not tracking non C&D haulers. Note: City will implement reporting system and process for all haulers to meet requirements under this section.

(S) 14 CCR section 18991.1. Jurisdiction Edible Food Recovery Program.

(T) 14 CCR section 18991.2 Record Requirements for Jurisdiction Edible Food Recovery Program.

i. Not fully implemented. Note: City is working with Fresno County Department Public Works and Planning to fully implement program and partner with edible recovery organizations as well as tracking edible generators to meet requirements.

(W) 14 CCR section 18993.1 Recovered Organic Waste Product Procurement Target. i. Not fully implemented. Note: The City currently procures organic waste and has a good program in place. The City plans to increase Organic Waste Products and also analyze the amount that is currently purchased to meet current target.

(X) 14 CCR section 18993.4 Record Keeping Requirement for Recovered Organic Waste Procurement Target. i. Not implemented record keeping of recovered organic waste. Note: The City will work together with all departments to capture current purchases and track.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: February 14, 2022

SUBJECT: Consider Approval – Master Clovis Trails and Right-of-Way Use Agreement and the Memorandum of Interpretation between the City of Clovis and Fresno Irrigation District.

Staff: Scott Redelfs, Public Utilities Director

Recommendation: Approve

ATTACHMENTS:

1. Master Clovis Trails and Right-of-Way Use Agreement
2. Memorandum of Interpretation
3. Estimated MTA Annual Maintenance Costs
4. Map of Clovis Trails Adjacent to District Facilities

CONFLICT OF INTEREST

None.

RECOMMENDATION

For the City Council to approve the Master Clovis Trails and Right-of-Way Use Agreement and the Memorandum of Interpretation between the City of Clovis and Fresno Irrigation District (District), and to authorize execution of the agreements on behalf of the City.

EXECUTIVE SUMMARY

Staff is recommending that Council approve the Master Trails and Right-of-Way Use Agreement (MTA) with the District to ensure the City's current use and future expansions of trails alongside, intersecting, across, on top of, adjacent to, or articulating with any District canal or District right-of-way within the Clovis City limits. The MTA addresses District concerns of risk, exposure, liability, indemnification, homeless abatement, plan review and construction standards, and increased operations and maintenance costs in connection with use of its canal banks and canal system for recreational trails within City limits.

In conjunction with approval of the MTA, staff is recommending that Council approve a corresponding document referred to as the Memorandum of Interpretation (MOI). The MOI summarizes the terms of the MTA in a more clearly understandable manner and expresses the mutual interpretation of the parties regarding responsibilities described in the MTA. The MOI

provides an easier way to view the commitments of the two agencies; however, the MTA will govern in case of a disagreement on terms.

The District and the City of Clovis have a long-standing relationship of working together to address common issues and to plan for the long-term wellbeing of the agencies. Through an iterative review process and with an understanding for each agency's goals for having trails located on or adjacent to District facilities, the agencies have worked to develop this agreement to address each agency's short-term concerns as well as laying out the framework for trail placement on or adjacent to District facilities that were not considered in the past. This agreement will allow the City of Clovis to work with the District to establish trails on canal banks within the City that will provide a level of connectivity, as the City can now look at adding segments to the trail system.

The MTA will allow the City of Clovis to pursue adding trail segments and pedestrian pathways using the top of the canal banks located within City limits and the sphere of influence. Underserved areas in the southwest portion of the City that have waterways, such as the Gould Canal, could be made accessible for pedestrian trail uses.

BACKGROUND

City of Clovis and District staff have been working to complete a Master Trails Agreement (MTA) that would address the concerns of the two agencies. The following is a list of concerns identified and how they are being addressed in the agreement.

City's use of existing trails and development of future trails

The MTA addresses current concerns of the District, but more importantly, allows for the City to work with the District to develop future trails on top of District canal banks within the City. This creates the opportunity to use existing canal banks such as Dry Creek and the Gould Canal for trail connectivity. This agreement also provides the opportunity to construct pedestrian bridges over canals at specific locations for continuity of the trail system.

Dry Creek channel

The MTA sets the stage to address maintenance of the Dry Creek channel. The City is participating in the costs of the maintenance responsibilities for Dry Creek within City limits. The Dry Creek is currently maintained by the District through an agreement that includes the District, Fresno County, the City of Fresno, and the Fresno Metropolitan Flood Control District. This group of agencies is known as the Stream Group. Staff expects the District to continue its maintenance efforts under the Stream Group agreement with enhanced maintenance participation by the City and the District. This is captured in the MTA with the two agencies developing a 10-year strategic plan to address additional maintenance responsibilities outside of the Stream Group maintenance obligations.

Physical barriers separating trails from District facilities

Typically, the District requires some type of fencing or other barrier to keep recreational trail users away from its facilities when an existing or future trail is situated near or adjacent to District facilities. Through this agreement, the District will no longer recommend or require barriers and will leave the matter fully to the City in making those decisions.

Common use agreement

If the City intends to make physical improvements to a trail segment or construct a bridge crossing over a canal bank, or if there are access issues with private property landowners, the District may require that the City enter into a common use agreement. The common use agreement will address any issues not captured in the MTA.

Plan review and design standards

The City and the District have been following an established process for plan review and approval of proposed trail segments affecting the District. This agreement memorializes the process and there is no significant change to the plan review and approval process.

City and District enforcement

The City shall enforce the terms of this agreement and be responsible for the public use of the trail facilities, as well as public use or misuse of District facilities. The City shall be responsible for the consequences of trail users that are injured or suffer a loss from District facilities encompassed under the agreement. This agreement does not prevent the District from enforcing any prohibition against unauthorized use or users of the District facilities.

Construction improvements

Improvements on or adjacent to District facilities shall comply with all laws and be approved by both the City and the District.

Homeless abatement

The City is agreeing to undertake the full administrative, funding, and enforcement responsibilities to address and resolve issues related to homeless camps and homeless sites.

Canal bank maintenance including litter control and weed abatement

The agreement includes provisions for the City to maintain common use areas at a level equal to or better than the level at which the District would maintain their facilities. This includes the City performing litter control, weed abatement (when subject to a common use agreement), potential dredging costs to improve mutual access to and the condition of the District's facilities, and to reimburse or provide for any other additional maintenance costs above and beyond typical District costs due to the recreational trail uses.

Signage

To the extent that the City deems appropriate, signage may be placed in City or District right-of-way to address recreational trail uses of the District facilities. Signage may be informational or convey rules of use that would be enforceable. The City will work with the District to identify and install appropriate signage for use and preservation of the trail system, protection of District facilities, and notification to the public of inherent risks associated with use of the trail system.

Indemnification

The City will indemnify the District and assume all risk and liability associated with City recreational parks and trails adjacent, atop, alongside, crossing, intersecting/articulating, accessible to, or having any impact on the District canal system or segments associated with the District.

Termination

Either party may terminate the agreement by providing thirty (30) days written notice to the other. Should the City determine in subsequent years that the MTA did not produce the anticipated benefits of adding and connecting trail sections within the City of Clovis and its sphere, the City may decide to proceed to terminate the agreement. Upon termination, obligations that were incurred prior to the agreement will continue and the City shall continue to indemnify the District for any and all recreational non-District uses of District facilities.

FISCAL IMPACT

The known financial impacts of this agreement on an operational basis are estimated to be about \$117,500 annually and are shown in the attached Estimated MTA Maintenance Obligations (Annual Costs). These costs can vary depending on the assumptions and potential additional work that may be necessary per the agreement. The Public Utilities Department will be providing tree trimming, weed control as prescribed, litter control, canal patrol, and incidental maintenance of District facilities as referenced in the agreement. The estimated costs include additional services such as toter/can pickup that would need to be provided as canal banks are fully opened for pedestrian use. The inventory of the trails affecting District facilities for which this agreement would create an additional cost burden is reflected in the estimated costs. Costs can be absorbed by the Public Utilities Department for this fiscal budget year. In future years, and as the City adds more trails on canal banks or encroaches more into District facilities, additional costs will need to be budgeted accordingly.

Funds and resources that would be affected by the increased costs would be budgeted from the General Fund (trails), the Water Enterprise Fund (waterways), and the Refuse Enterprise Fund (trash and cleanup). Approximate annual costs to each section are as follows:

- General Fund: \$54,000 (tree trimming, litter and weed control, signage)
- Water Enterprise: \$49,000 (canal patrol, miscellaneous FID assistance)
- Refuse Enterprise: \$14,500 (totter pickup)

Staff has inquired with the Risk Management Agency (RMA) for the City of Clovis and they responded that the contract terms associated with risk, exposure, liability, and indemnification are acceptable as presented in the agreement. As the City of Clovis Police Department actively responds to homelessness and homeless abatement, this agreement only reiterates what the City already does in regard to homeless abatement and there should be no additional burden to the City because of the MTA. With regards to the plan review and processing of construction standards, this agreement memorializes the interaction between the parties for development of trails affecting District facilities within City limits.

REASON FOR RECOMMENDATION

City and District staff agree that it is time to memorialize by agreement the relationship and use of trails alongside, intersecting, across, on top of, adjacent to, or articulating with any District canal or District right-of-way within the Clovis City limits. City staff is recommending approval of the agreements so that the City can develop future trails on or along District canal banks with the support and concurrence of the District, as implied by this agreement. The agreement also sets out the terms and conditions of risk, exposure, liability, indemnification, homeless abatement, plan review and construction standards, and increased operations and maintenance

costs in connection with the City's use of District canal banks and canal system for recreational trails within City limits and sphere of influence.

ACTIONS FOLLOWING APPROVAL

The Master Clovis Trails and Right-of-Way Use Agreement and the Memorandum of Interpretation will be executed by the City of Clovis and Fresno Irrigation District. City staff will begin working with the District to identify potential segments of trail that could be made accessible under this agreement, and will apply the terms of the agreement to all existing and future affected District facilities that are encompassed by the City's trail system.

Prepared by: Scott Redelfs, Public Utilities Director

Reviewed by: City Manager *JH*

MASTER CLOVIS TRAILS AND RIGHT-OF-WAY USE AGREEMENT

This Agreement is made effective as of _____, 2022, between the Fresno Irrigation District, a California irrigation district formed and operating pursuant to Division 11 of the California Water Code, and a public entity, (“District”) and the City of Clovis, a California municipal corporation and general law city (“City”), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. District manages and distributes water for irrigation and municipal purposes through, among other things, a 600+ mile network of canals, pipelines, structures and appurtenances owned, operated, and managed by District (“District Canals” or “Canal System”). District utilizes its Canal System to transport surface and other water to its customers. District also utilizes its Canal System to deliver surface and other waters to the City of Clovis, for City’s municipal surface water treatment facilities and associated uses, including groundwater recharge. City has a longstanding partnership with District for these and other purposes.

B. District Canals are situated on lands in which the District has a real property interest (“District ROW” or “District Real Property Interests” which terms are used interchangeably throughout this Agreement), which may consist of: fee title; easements [expressed, reserved, implied, prescriptive, statutory (California Water Code, including section 22438, California Civil Code section 1009, etc.) and otherwise]; or interests shown on plat maps, subdivision maps, outlot maps, dedications, surveys and other recorded or unrecorded interests, collectively or separately referenced herein as the District’s Canal System, District Canals, Canal System, District ROW, District Canal Banks or District Real Property Interests.

C. City maintains a network of recreational trails (“Recreational Trails”) throughout City for the benefit of the residents and visitors to the City. Either sited in conjunction with Recreational Trails or separately sited without a connection to Recreational Trails, the City has also located City parks and City recreation areas alongside, or in close proximity to District Canals and District ROW’s for aesthetic, greenway or other reasons. There is also historical pedestrian and recreational use by the public of District Canal Banks in some locations, either as unofficial connection points to existing or future City Recreational Trails, Informal Trails, formal trails, or stand-alone uses¹. It is therefore the intent of the Parties to this Agreement that all such existing, planned or future City parks or City recreational areas (“Parks”), in addition to all existing, planned or future Recreational Trails, Informal Trails, formal trails and Big Dry Creek bank trails within the City Limits and Spheres of Influence² used for pedestrian or recreational uses in

¹ Said historical public uses on or over property interests and/or easements owned by the District can: “(n)ever ripen into any title, interest or right against the” District and the District’s uses thereof in favor of the public as codified in California Civil Code section 1007. The public cannot prescribe against government property.

² Clovis’ Sphere of Influence or “SOI” for purposes of this Agreement includes all Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future such as Tarpey Village, Dry Creek Preserve, etc.

ATTACHMENT 1

close proximity to District Canals and District ROW's (hereinafter all "Recreational Trails") shall be governed by and subject to the maintenance as well as the indemnity, assumptions of risk and other provisions of this Agreement vis-à-vis the rights and obligations of the Parties hereto to the extent that they are part of the defined term of the City's Recreational Trails. For definitional purposes of this Agreement, Recreational Trails subject to this Agreement include but are not limited to the City's Recreational Trails as well as all City Parks and recreational areas which are or which may be alongside, intersect³, are across, cross, are atop or adjacent to or articulate with any District Canal or District ROW as well as Informal Trails, formal trails, Big Dry Creek bank trails; and, trails on District Canal Banks that are located within City's boundaries (also sometimes referenced as "City Limits") and Sphere of Influence ("SOI") or which may be subsequently annexed into the boundaries of City or City SOI. The parties likewise intend that all pedestrian and/or vehicular bridges that span canals within City limits or City SOIs now or as they expand are also defined as "trails" to which all of the provisions of this MTA apply. The City maintains or uses/encourages access to a network of all of these types of recreational trails ("Recreational Trails") as well as City Parks and recreational areas ("Parks") for the benefit of residents and visitors. Some existing Recreational Trails and Parks sit alongside, adjacent to, atop, across, intersect and/or articulate with or cross the District's Real Property Interests/Canals. City desires to expand its network of Recreational Trails and Parks and finds that certain lands alongside, intersect or articulate with, are adjacent to, atop, across or cross over or within District ROW may be suitable for the use and placement of additional Recreational Trails and Parks. District is amendable to cooperating with the City to expand the City's use of these types of trails associated with District Canals and their banks ("District Canal Banks"). Therefore, notwithstanding the various locations, intersections, sitings, descriptions, etc., of trails referenced above or elsewhere in this Agreement vis-à-vis District Canal Banks and District's open channel canals, when this Agreement discusses "Recreational Trails" and/or "Recreational Parks" (see E. below) those phrases are intended to encompass all District Canal Banks and the District's open channel canals within City Limits, County islands and City SOI now or as same may be expanded in the future which are capable of being used, accessed or crossed by pedestrian traffic or other recreational uses in as comprehensive and all-inclusive definitional scope possible.

D. The Parties acknowledge that City's existing and planned expansion of its Recreational Trails along District's Canal Banks may, in some instances, impact District's ability to adequately operate, maintain, expand, upgrade, repair, clean, control, monitor, measure, treat, control weeds, access, construct, use, occupy, enhance, replace or work on (hereinafter Operate and Maintain or to undertake the Operation and Maintenance of) its Canal System within the District's operational plans, specifications and standards.

E. City wishes to continue to expand its Recreational Trail system (which includes Parks as that phrase "Recreational Trail" or "Recreational Trail system" is used herein) along, adjacent to, alongside, atop or crossing or intersecting/articulating with or capable of being used, accessed or crossed by pedestrian traffic for all open District Canal Banks within District's Canal System. The District has operational, maintenance, access, liability and public safety concerns anytime that the City envisions members of the public using any part of the District's Canal System for recreational

³ See definition section.

or other purposes. However, District desires to cooperate with the City's use and expansion of the City's Recreational Trails, provided: (a) District maintains Operation and Maintenance access and operational control of those portions of its District Canal Banks and Canal System alongside, adjacent to, or overlapping with City's Recreational Trail system, (b) District has full and unrestricted access to, from and on the side opposite any Recreational Trail segment built alongside, atop, along, or adjacent to, or crossing or intersecting/articulating with District Canal Banks, (c) City pays for the increased Operation and Maintenance costs, impacts or liability exposure resulting from City's Recreational Trails or provides in kind services for the same as provided in Section 7 in the body of the Agreement, (d) City assumes all risk, exposure, liability and/or insurance costs in connection with its use of or access to the District Canal Banks and Canal System for Recreational Trails and indemnifies the District therefore as more specifically provided for herein; and, (e) any and all Real Property Interests of the District that are or may become impacted or disputed by or on account of the Recreational Trails System shall be addressed and resolved such that the District continues to enjoy its Real Property Interest use and control rights. District and City wish to establish the conditions under which City shall be permitted to use District ROW, including City maintenance and indemnity obligations. District and City also wish to establish City use, maintenance and indemnity obligations for Recreational Trails and Parks that are situated adjacent to District ROW, alongside, atop a District ROW or crossing or intersecting/articulating with or over a District ROW as more specifically provided for herein.

F. District and City wish to establish the conditions under which City shall be permitted to use District ROW/ the District's Real Property Interests/Canals for Recreational Trails and Parks pedestrian and recreational uses including City maintenance and indemnity obligations in connection therewith, including but not limited to those Recreational Trails and Parks (as defined above) when there are no physical barriers separating the two.

G. Users of City's Recreational Trails and Parks currently use District ROW, primarily District Canal Banks, as connectors between City Recreational Trails and Parks, or in some instances as a stand-alone Recreational Trails (City's existing, planned and future Recreational Trails and Parks, "Informal Trails," formal trails or Big Dry Creek banks all being described hereinafter as "District Canals," "District ROW" or "District Canal Banks"). City desires continued and ongoing access to District Canal Banks (within City Limits or the City's SOI areas as said SOI boundaries expand) for all of these types of trails, including Informal Trails, with all such trails being subject to all of the terms of this Master Trails Agreement whether or not included in a Common Use Agreement ("CUA"). Any other Recreational Trails or Recreational Parks accessed by a Recreational Trail, including designation of a Canal Bank as a City Recreational Trail or any improvements for Recreational Trail purposes, as well as any Informal Trails, formal trails or Big Dry Creek bank trails currently outside of the existing SOI, will require a Common Use Agreement upon the annexation of those areas into the City unless a CUA for that segment is waived by District. In addition, any and all additions, improvements, expansions to or increased size, capacity, modification of District ROW or scope of any existing City Recreational Trail or Park, formal trail, Informal Trail or Big Dry Creek bank trail on District ROW within the City Limits from and after the date hereof, shall require a Common Use Agreement under the terms hereof unless said CUA is waived by District for a specific trail segment request. City has identified those Canal Banks that are currently, or likely to be used, as Informal Trails, formal trails, City Recreational Trails and/or Parks and Big Dry Creek bank

trails within City's existing or future City Limits, existing Sphere(s) of Influence (SOI), including the proposed North of Shepherd SOI expansion area as identified on the map shown in **Exhibit E**, all of which trails, whether depicted thereon or not shall be subject to the terms, obligations, requirements and provisions of this Master Trails Agreement including but not limited to those found in Sections 7 & 11 and covering and applicable to all Recreational Trails whether within or without City Limits as well as Recreational Trails within the City's then-applicable SOI as it may be expanded by the City. City is entering into this Agreement with District's recognition that District Canal Banks are being used, and will continue to be used for all of these enumerated types of trails, subject to all of the terms of this Master Trails Agreement, including but not limited to the City agreeing to hold harmless, indemnify, and defend District from any liability associated with recreational use of trails in City's Limits and the then applicable SOI, as well as any disputes over District Real Property Interests relating to that use as such terms, provisions and obligations are more specifically provided for hereinafter.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, and incorporating the foregoing Recitals as being applicable to and being included as to terms to this Agreement, the parties additionally agree as follows:

1. Definitions. For the purpose of this Agreement, the following terms shall be defined as follows:
 - (a) "Adjacent" shall be defined according to its ordinary language which means having a common endpoint or border.
 - (b) "Proximate" shall be defined as in proximity to, associated with or within the City's Recreational Trail System and/or Parks which have any access to the District's Canal System.
 - (c) "Intersect" or "articulate" as those terms are used in this Agreement (when referring to the City's Recreational Trails and Parks that "intersect" or "articulate" with the District's Real Property Interests/Canals) intends to include and apply to any Recreational Trail(s) and/or Parks which: (a)) have a beginning at, end with or allow a user thereof to access the District's Real Property Interests/Canals, (b) are located between or connect with/touch one or more of the District's Real Property Interests/Canals, (c) have a common alignment at any point with one or more of the District's Real Property Interests/Canals, (d) comprise one or more segments of a pathway or trail or shortcut that includes a segment of Recreational Trail and a segment of canal bank including those that use the District's Real Property Interests as a shortcut or bypass to/from a Recreational Trail (e) are located parallel to (whether separated by a street, Park, lot or body of water) any of the District's Real Property Interests/Canals; or, (f) all pedestrian and/or vehicular bridges which span canals are also defined as "trails" to which all of the provisions of this MIA apply.
 - (d) "District" as used herein is the Fresno Irrigation District but includes the non-City Fresno Stream Group members, in the very limited situation involving the

pedestrian or recreational use of trail segments on the banks of Big Dry Creek as it runs through the City Limits or within any City SO1 in the future.

- (e) For definitional clarity, references in this Master Trails Agreement the terms “Informal Trails”, “formal trails”, “Big Dry Creek bank trails”, “City’s Recreational Trails and Parks”, “City’s Recreational Trails,” “Recreational Trails” or pedestrian and/or vehicular bridges spanning canals are universally defined as all trails or pathways used for pedestrian and/or recreational purposes within the City Limits of Clovis or any current or then future Clovis Sphere of Influence area(s) (“SOI”) that are adjacent or proximate to, intersect or articulate with or are located atop, across, on, parallel to or connect with ANY District ROW, District Canal, District Canal Bank, Big Dry Creek bank, or otherwise impact any the District ROW, with all of these types of trails being subject to all of the terms of this Master Trails Agreement, and “Recreational Trails” or “Recreational Parks” include the banks of all District Canals/District open channel canals within City Limits, County islands and City SOI as they now exist as of the date of this Agreement or as same may be expanded in the future which are capable of being used, accessed or crossed by pedestrian or recreational traffic in as comprehensive and all-inclusive definitional scope possible—any District Canal Bank is a Recreational Trail for purposes of this Agreement.

2. Recreational Trails and Parks: Consultation with District. All open District Canals and District Canal Banks located within the City Limits as of the date of this Agreement (or hereafter annexed into the City Limits or included within existing/future SOI areas) that are used as trails⁴ or pathways for pedestrian and/or recreational purposes as expansively defined in 1 (e) above [including all any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future shall be automatically covered, governed and subject to the terms of this MTA, including the indemnification and liability provisions of section 11 below] without any need for a single or multiple Common Use Agreement(s) (“CUA”), as discussed hereafter. Any City-initiated improvements to trails or pathways on canal banks within City Limits from and after execution of the MTA shall require a CUA as hereinafter provided, unless waived by the District. As provided for in Sections 2.2(b)(1) and (2), for District Canal Banks within the City Limits and inside the City SOI as of the date of this MTA, the District agrees that it will not gate, fence or obstruct travel or uses of Recreational Trails thereon other than for the reasons set forth in Section 2.2(b)(4) unless approved in writing by the City. For District Canal Banks outside of the City Limits and outside of the City SOI (including District Canal Banks within any Fresno County islands noted immediately above) as of the date of this MTA, the District is free to gate, fence, or obstruct travel or uses thereon if in its opinion such actions are necessary to: (1) protect, preserve or enhance the District’s ROW and/or access to and from its canals, (2) to protect District infrastructure; or, (3) preserve or maintain public safety, including public water quality safety. However at such times as said District Canal Banks are annexed into the City and are associated with any kind of trail or pathway used for pedestrian and/or recreational purposes,

⁴ Trails or pathways that are adjacent or proximate to, intersect or articulate with or are located atop, across, on, parallel to or connect with ANY District ROW, District Canal, District Canal Bank, Big Dry Creek bank, or otherwise impact any the District ROW,

any provisions of this MTA that may not have previously been applicable to those trails, if any, shall attach to same and said trails shall be thereafter remain and/or become subject to all provisions of the MTA and be the subject of a required CUA for that stretch of canal bank just annexed unless the CUA requirement is waived by the District for certain trail or pathway segments following annexation. If the City has any concerns or issues with any pre-annexation installed gates, fences, travel obstructions or uses of the District's ROW they are to be addressed in a mutually approved CUA for such matters which the parties agree will follow the guidelines and provisions of this MTA recognizing the City's interest in avoiding gates, fences, travel obstructions on trails or pathways consistent with Section 2.2 and the City's aesthetic goals as described therein, while being sensitive to the issues of public safety (including public water quality) identified by the District, unless the CUA in such trail segment location(s) is/are waived by the District.

City also agrees to consult with District regarding City's planned expansion of its Recreational Trails and Parks. Consultation shall focus on at least two areas: (a) Recreational Trails or Parks planned to be situated adjacent to, alongside, proximate to, atop, crossing or which intersect or articulate with a District ROW; (b) situations where City desires to use District ROW. The City's pedestrian and other recreational uses use of District ROW for Recreational Trails may include uses adjacent to a canal bank ("Adjacent Canal Bank"), on top of a canal bank ("Top of Canal Bank"), or crossing over or intersecting/articulating with a canal ("Cross Over Canal" such as a pedestrian or vehicular bridge and sidewalks thereon) or otherwise proximate to or intersection/articulating with a District ROW.

2.1. Exceptions. This Agreement does not apply to the following:

(a) Underground Facilities. Any District ROW where the District's conveyance facility is exclusively and solely an underground pipeline or subsurface conduit conveying District water.

2.2. Physical Barrier Separation.

(a) Adjacent to District ROW. District understands that the City of Clovis has existing and planned Recreational Trails adjacent to, alongside, atop, articulating/intersecting with or crossing the District ROW for aesthetic, greenway, and other open space reasons and that a fence, gate or other similar physical barrier adjacent to a Recreational Trail separating same from a District Right of Way in some locations may be contrary to City's aesthetic goals and the primary intent of this Agreement, which is to provide public trail access and trail uses associated with District Canal Banks while protecting the District from all liability in connection with Recreational Trails associated with any District Canal Bank or open channel canal banks wherever located as discussed in Sections 1 & 2, above or otherwise impacting the District ROW's. Therefore, with the City assuming all liability and risk associated with the location of Recreational Trails associated with any District Canal Bank or open channel canal banks wherever thus located or otherwise impacting the District ROW's the choice of whether or not to erect a physical barrier between or on the District's ROW or a Canal Bank within the City's Limits where a Recreational Trail or Park is sited outside of or adjacent to, alongside, or atop, crossing articulating/intersecting with or otherwise impacting the District ROW, is a matter left

exclusively to the planning and implementation of the City⁵; and, shall not diminish or eliminate any obligation or liability of the City to the District hereunder for any Recreational Trail or Park associated with any District Canal Bank or District open channel canal bank within the City Limits, County islands or City SOI as they exist now or in the future.

(b) Across District ROW.

(1) The District will not erect gates or other physical barriers across District Canal Banks within City Limits or the City SOI that prohibit pedestrian access on segments of Recreational Trails whether or not subject to a Common Use Agreement hereunder without the concurrence of the City except for matters involving protection of District infrastructure, or public safety, including public water quality safety, as provided for in Section 2.2(b)(4), below.

(2) The District will neither issue encroachment permits nor grant permission to adjacent private property landowners to erect gates or other physical barriers across District Canal Banks within the City's SOI or City Limits that would prohibit pedestrian access on segments of Recreational Trail Segments whether or not subject to a Common Use Agreement hereunder without the concurrence of the City except as noted in 2.2(b)(4). Where District ROW is based solely upon a prescriptive easement, and upon either the City's request or the District's own initiative, District will exercise its statutory rights pursuant to California Water Code section 22438 to prevent any encroachment or obstruction that unreasonably interferes with District's access to and use of the District ROW or District Canals and their operations. If the District initiates or becomes involved in litigation regarding the disapproval or removal of any District-determined unreasonable encroachment or obstruction as provided for by statute and is not reimbursed its full legal costs and expenses, including legal fees, on account of such litigation by the complaining, encroaching or obstructing owner, any unpaid legal fees, costs and expenses shall be reimbursed District by the City, immediately upon request.

(3) At City's request, District shall use best efforts to remove, or cause to be removed, any existing gates or physical barriers erected by adjacent private property landowners on District Canal Banks or District ROW contrary to this Section 2.2 (b) paragraph (2) within City Limits or City SOI. In the event such removal is challenged by the encroaching or obstructing landowner, whether in legal action or otherwise, City shall defend and indemnify District for any and all costs, expenses and legal fees associated with such dispute(s).

(4) Notwithstanding the foregoing provisions (1-3), the District may erect temporary or permanent gates or other physical barriers across District Canal Banks and/or ROW's when necessary (as determined by District) to: (a) prevent non-District access to, on or across District Canal Banks and/or ROW's for public safety (including public water quality) reasons, including Canal Bank maintenance or construction; and/or (b) to protect District infrastructure. For Recreational Trail segments within the City Limits and the City's SOI, whether or not subject to recorded Common Use Agreements, District shall notify City of any need to erect such gates or other physical barriers within the City's then applicable City Limits, and the City's SOI and

⁵ Except for the provisions of Section 2.2(b)(4) hereunder

absent an emergency, shall provide City with not less than ten (10) days' notice of its intent to erect gates or other physical barriers. City and District shall coordinate any posting of appropriate signage required for notice or enforcement. For Recreational Trail segments that are outside of the City Limits and the City's SOI, the District has no obligation to obtain permission from the City to erect such District gates it deems necessary to prevent non-District access to, on or across District Canal Banks and/or ROW's for public safety (including public water quality) reasons, including Canal Bank maintenance or construction; but will notify the City of decisions to erect gates or other physical barriers incident to Canal maintenance, work, restoration or activity deemed necessary by the District and may or may not post or coordinate signage of trail or Canal Bank closure with the City in such situations. The City is welcome to request CUAs for any such trail segment(s) within the City Limits and for any such trail segment currently outside City Limits once such trail segment is annexed.

(5) In addition to the indemnity obligations found elsewhere in this Agreement, including those found in Section 11, as well as the provisions in Section 2.2.(b) (2), City shall defend and hold District harmless from any dispute over District Real Property Interests relating to any private property landowner's claim of a right to erect a gate or other physical barrier across any District Canal Bank as that term is defined, expansively, herein. District acknowledges that in defending any District Real Property Interests, City may assert prior long term recreational use of District Canal Banks and refer to this Agreement⁶. City shall use its best efforts to resolve any District Real Property Interest disputes with such private property landowners. When necessary, City may initiate or participate in legal action to perfect District's Real Property Interest and if successfully established in favor of the District, District will thereupon recognize and/or grant such City Recreational Trail/Park use rights as it is capable of granting to the City under and subject to the terms of a Common Use Agreement as provided for under this Agreement. City shall consult with District regarding all critical decisions involved in the resolution of such a dispute. The City shall be responsible to pay any and all costs, expenses and legal fees associated with any such landowner actions brought against the District.

6. In situations within the City Limits or City SOI where gates have been placed across canal banks by the District or the City which are used for trails of any kind or nature, said gates shall be chained/locked in the "open" position to allow for the use of such canal banks as City Recreational Trails, unless such trail segment is closed for maintenance by either the District or the City; or, the City elects to chain/lock a gate in the "closed" position to preclude trail use for any reason while still allowing for City/District maintenance and operational access at that location.

3.1. Acquisition of Recreational Trail Site and District Easement. To the extent: (a) City approves any future property development located adjacent to District ROW and City acquires a fee title or easement for a Recreational Trail adjacent to, intersects, articulates or crosses with or lies atop or alongside or proximate to any District ROW, where the District ROW is prescriptive and not reflected, described or referenced on any recorded document; and (b) the owner of the property granting the fee title or easement to City is the same owner of the property subject to the District's prescriptive interest, City shall require the owner of that property to grant to District an easement ("District Easement") in the form attached hereto as **Exhibit B** for the standard width

⁶ See footnote 1, page 1

and size including at least twenty feet (20') full minimum width across the top of the canal bank, and having at least a twenty feet (20') unobstructed clear opening across the District's Easement width as provided in the District's standard canal profiles (depicted on **Exhibit C** hereto). This same provision and terms likewise apply if the City acquires fee title to any lands abutting or subject to the District or Fresno Stream Group easements or rights of way abutting Big Dry Creek, requiring the City to grant to the Fresno Stream Group an easement ("Fresno Stream Group Easement") in the form attached hereto as **Exhibit B** for the standard width and size including at least twenty feet (20') full minimum width across the top of the canal bank, and having at least a twenty feet (20') unobstructed clear opening across the Fresno Stream Group's Easement width as likewise provided in the District's standard canal profiles (depicted on **Exhibit C** hereto). The purpose of the District Easement and/or the Fresno Stream Group Easement is to accommodate both City's and District's contemplated uses and District's (or Fresno Stream Group's) recorded easements or Real Property Interests, as well as its statutory easements and protections provided for in such places as California Civil Code sections 1007 & 1009, California Water Code section 22438, etc. As to those properties already acquired by the City adjacent or alongside, atop or crossing or articulating/intersecting with or having any impact on any of the District's ROW and/or easements, or Fresno Stream Group ROW and/or easements] City likewise agrees to the District's (or Fresno Stream Group's) similar enjoyment of the District rights (including Fresno Stream Group's rights) and standards set forth in **Exhibits B & C** as being applicable to the City's properties on both sides of the District's easements (or Fresno Stream Group's easements, if any) along Big Dry Creek, in recordable form.

The **Exhibit C** canal profiles represents District's desired approach dimensions (20 feet to 50 feet) but is subject to individual site specific agreements between the respective staffs of City and District taking into account several factors including median(s), geometry of the canal crossing, etc.; and, will be worked out in the Common Use Agreement process provided for herein. How any specific approach is mutually worked out between the parties under this Agreement is not intended to set a precedent for how other District canal approaches adjacent to City streets in other development contexts are to be sized.

4. Area of Common Use.

a. Area of Common Use. The portion of District ROW utilized by City for its Recreational Trails shall be designated "Area of Common Use." District hereby generally consents to City's use of District ROW for Recreational Trails and related activities (which might include City Parks) subject to the express terms and conditions of this Agreement. Notwithstanding the foregoing, in order for District's consent to such use to be valid, City and District must enter into a project specific Common Use Agreement as set forth in this Agreement for each Recreational Trail segment unless the need for a specific trail segment using the District ROW is waived by the District because it deems: (a) the terms of this MTA are fully applicable to that segment as it exists; and, (b) no CUA is needed until such future time as the City elects to improve or expand the trail uses existing from and after the date of this MTA, at which point a CUA should be initiated by the City to District for that trail segment improvement/expansion. For existing Recreational Trail segments or Parks already located along, adjacent to District ROW's or alongside, atop, crossing, or intersecting/articulating or otherwise impacting same,

this Agreement applies retroactively, currently and prospectively thereto (with or without a Common Use Agreement being in place) as to all aspects hereof, including District's standard canal drive bank widths, etc., as practicable and as the City and District can both agree on pre-existing conditions and the applicability of this Master Trails Agreement while taking into account Section 5.a.'s requirements for a Common Use Agreement for Recreational Trail segments in certain situations.

b. Outside Area of Common Use. Nothing in this Agreement shall relieve the parties from any responsibility to the other for damage to the other's property located outside of the Area of Common Use or the Recreational Trails designated in a Common Use Agreement other than as provided herein or modified by a specific Common Use Agreement.

c. Request for Access Not Defined. In the event that either party requires access to an Area of Common Use under a situation not otherwise provided for herein or contained in a specific Common Use Agreement, such party shall provide notice of its requested access to the other Party at least thirty (30) days in advance. Notwithstanding any other term or provision of this Agreement or any Common Use Agreement, the parties acknowledge that ingress, egress and access to/from the District's ROW's on account of recorded or unrecorded easements or Real Property Interests, as well as its statutory easements and protections provided for in such places as California Civil Code section 1009, California Water Code section 22438, etc., shall not be restricted unless specifically, expressly and otherwise provided for in this Agreement or in a separate site-specific or segment-specific Common Use Agreement.

d. Emergency Access. No notice shall be required and either party may proceed to do what is reasonably necessary to prevent serious loss or damage and to protect the public health and safety, or to insure unimpeded Maintenance and Operation of the Canal System by District during water flows or emergency repairs.

5. Common Use Agreement for Use of District ROW.

a. Common Use Agreement. For each individual segment of the City's Recreational Trails within the City Limits which requires or involves any common use along a portion of the District's ROW that is adjacent to, intersects, articulates or crosses with or lies atop or alongside or proximate to any District ROW, the Parties shall enter into a Common Use Agreement substantially in the form attached hereto as **Exhibit A**, unless: (a) they are involving existing Recreational Trail segments or Parks already located along, adjacent to District or Fresno Stream Group ROW's or alongside, atop, crossing, articulating/intersecting with or otherwise impacting same as noted in paragraph 4.a., above; or, (b) the requirement of a CUA is waived by the District, Additionally, and notwithstanding the foregoing, for any and all City-planned or implemented improvements, expansions, relocations or additions to or increases in size, capacity, modification of District ROW or scope of any existing Recreational Trail segment or Parks as of the date of this Master Trails Agreement; or, for any City acquired ROW for which a Recreational Trail and/or Park is contemplated from and after the date hereof, in either event, in each of these situations any such Recreational Trail segments shall require a Common Use Agreement to be initiated by the City and brought to the District. The City's placement of trash receptacles and/or signage on non-CUA trails of any kind shall not trigger the need for a CUA

but will still require the City to be obligated for homeless issues, weed abatement, litter control and the other activities in those areas as provided in Section 7 hereof.

b. Contents. Each Common Use Agreement shall: (1) incorporate by reference all covenants, conditions, and agreements of this Agreement; (2) describe the parameters of the District ROW upon which common use is to occur, including any access issues; (3) provide a legal description of the property subject to common use; (4) identify the proposed Recreational Trail; (5) provide the City and District with a perpetual right to common use of the Area of Common use identified therein; and (6) include any special conditions applicable to the particular proposed Recreational Trail, including the granting or acquisition of the **Exhibit B** easements in favor of District. The parties may set forth other terms and conditions as may be required, with the parties hereby agreeing to negotiate in good faith towards the purposes of this Agreement in each Common Use Agreement.

c. Access Issues. Without requiring same, the identification of Areas of Common Use may include and identify specific access to and from the District’s ROW even in situations where District’s Canal Banks are adjacent to City’s Recreational Trails but are not sharing common areas other than ingress/egress access areas. A Common Use Agreement will be used to locate, designate and provide (record) City access to and from District ROW.

d. Review by Risk Management. The Common Use Agreements and subsequent designs, planned operational parameters and the continuing operational parameters thereof are subject to the prior review and written approval of City’s Risk Manager, or designee, and District’s liability insurance carrier(s) or Risk Manager.

e. Preparation Costs. Once the design, ROW, construction plans/design and permitting and inspection processes have occurred or are underway as discussed in paragraph 6.f., hereof, each party shall be responsible for its own costs in preparing, reviewing and approving Common Use Agreements specific to each Recreational Trail segment.

f. Nature of Agreement. The covenants, conditions and agreements contained in each Common Use Agreement shall constitute covenants running with the land, and shall be binding on each of the parties to the agreement and on all parties and all persons claiming under them for as long as the Recreational Trail segment associated with a specific Common Use Agreement continues to be used for the purposes authorized by each agreement.

g. Notice of Change in Common Use. Should either party determine that the design and/or operational parameters of a segment of the City’s Recreational Trails requires alteration for any reason, the party shall notify the other and the parties shall meet and confer regarding resolution. The parties shall amend any affected Common Use Agreement for consistency with any mutually agreed changes.

h. Recordation. Each Common Use Agreement, after approval by District and City, and execution by both parties, shall be recorded by District and a recorded copy returned to City and District.

i. Timing. The Common Use Agreement for any segment of the Recreational Trail within an Area of Common Use must be executed prior to the commencement of construction on such Recreational Trail segment.

6. Design and Use of Areas of Common Use.

a. Design Standards. Recreational Trails within District ROW will be constructed in conformance with City’s Design Standards and are subject to the District’s design specifications and oversight.

b. No Obstruction. Except as otherwise provided herein, “City Improvements” (including but not limited to trail bridges, tree canopies, placement of crossings, etc.) shall not cause: (i) an interruption or interference with District’s “Operation or Maintenance” of its Canal System or the flow of water in or access to the Canal System or the delivery or drainage of water by District; (ii) an increase in seepage or any other increase in the loss of water from the Canal System; (iii) the subsidence of soil within or adjacent to the District Canals; or (iv) any other impact to, interference with or damage to District’s Canal System. Specifically, the location of any trees on the District’s ROW (which includes the Fresno Stream Group’s ROW for definitional purposes hereunder) shall be subject to setback requirements for Canal Banks and similar facilities for all such tree locations. In furtherance of paragraph 7.b.(2), below, FID and the City shall work together in good faith to develop a 10-year plan for the removal of trees or tree canopies that are: (1) growing/located on property owned by the City that obstruct District’s Canal System, (2) planted by the City and obstruct District’s Canal System, (3) result in obstructions to channel capacity and flow rates to District’s Canal System; or, (4) present potential hazards to the health and safety of the public where District Canal Systems are associated with City’s Recreational Trail segments. As part of this 10-year plan, the District and City each acknowledge that the District’s contractual tree-trimming work called for under the Fresno Stream Group for Big Dry Creek is funded pursuant to the flood control agreement by and among Fresno County, the City of Fresno, the City of Clovis and the Fresno Irrigation District dated August 6, 1946, recorded on October 10, 1975, found in Book 6494, beginning at page 903, Fresno County Records, as subsequently amended, which outlines the scope of the District’s work along Big Dry Creek, as also noted in paragraph 7.b., below. The City is also currently working with other Fresno Stream Group members in identifying and potentially planning for improvement projects along and within Big Dry Creek and Big Dry Creek Reservoir that would increase Big Dry Creek channel capacity and flow rate. The projects being identified therein would benefit multiple agencies as well as provide for channel clearance and tree removal to increase capacity and flow rate. The City and District’s financial obligations for maintenance costs under the 1946 Fresno Stream Group agreement, as amended, is separate and distinct from the maintenance obligations provided for in the MTA and set forth herein.

c. Safety Infrastructure. City’s design of Recreational Trail segments and any Improvements shall include all reasonable features necessary to protect the safety of members of the public who use the Recreational Trails, as determined solely by the City. In connection with the plan approval process by District for any Recreational Trail segment and its attendant

Common Use Agreement, District may suggest but shall have no other responsibility to designate or require fencing and has absolutely no liability associated with making any suggestions or providing ideas to the City regarding fencing or any other safety infrastructure whether or not such matters are being considered, adopted, modified or refused by the City. However, in connection with the plan approval process by District for any Recreational Trail segment and its attendant Common Use Agreement, District may specify and require City to install District access gates, equipment enclosures, signs, bollards and such other control structures within the Area of Common Use to protect District's valves, weirs, SCADA equipment, trash racks, pumping plants, diversion points/gate valves, and other similar interests, uses and maintenance and operational concerns to protect the District's facilities as determined by the District's planning staff and General Manager.

d. City and District Enforcement. As to members of the public, City shall enforce the terms of this Agreement, any associated Common Use Agreement, and applicable City ordinances governing the use of City Recreational Trails and Parks. City shall be responsible to and shall prevent members of the public using Recreational Trails from: (1) interfering with District's use, access to, and Operation and Maintenance of District's Canal System; and (2) from swimming, wading, boating, or conducting any other District prohibited activity within the inside slope of District's Canal Banks or its Canal System.

City shall be responsible for any and all consequences to its invitees or users of Recreational Trails and/or Parks who may use or be injured or suffer a loss on any District Canal System, District Canals, Canal System, District ROW or District Real Property Interests, Area of Common Use and/or any City infrastructure affecting same, for any purpose whatsoever..

This Agreement shall not prevent District from enforcing any prohibition against unauthorized use of District's Canal System or enjoying or enforcing its statutory rights, including but not limited to those under the California Penal Code, California Civil Code section 1009; or, California Water Code Section 22438, et. seq. as to all persons.

e. Preservation of District Access. City shall use its best efforts to design its Recreational Trails within Areas of Common Use to allow access by District to the District Canal System and District ROW for Operation and Maintenance purposes, as determined by District.

f. District Plan Review Fees. City agrees to pay the District for the District's staff's time spent on planning, coordinating, corresponding, reviewing design and construction plans and documents, preparing agreements, permits and performing inspection of Recreational Trail project construction for each trail segment constructed or implemented under this agreement or the associated trail Common Use Agreement. Charges shall be based on District's standard review fee schedule, or on a time-and-expense basis if determined to be necessary by either party. However, as noted in Paragraph 5.e., above, each party shall bear its own cost in the preparation of any specific Recreational Trail Common Use Agreement resulting from such finalized design plan, documentation or construction plans for each Recreational Trail segment.

g. Procedure for Submission, Review, and Approval of Requests for Common Use. The following procedures shall apply to the submission, review, and approval of Requests for Common Use:

- (1) Acquisition of District Easement. Where applicable, before submitting any Recreational Trail Segment for a Common Use Agreement, City shall provide evidence of the acquisition of the District Easement set forth in Section 3 of this Agreement.
- (2) Request for Common Use. City's Request for Common Use shall include the following:
 - (a) Description of Proposed Recreational Trail. Each request shall describe the proposed Recreational Trail segment, including a schematic drawing showing the proposed trail alignment and location. Access (ingress/egress) to and from District's Canal Banks/District ROW shall be described and noted on drawings and plans, subject to the review and approval thereof by District as provided for herein.
 - (b) Timeline. Identify the proposed dates of construction (if any) and identify any known local, state, or federal procedures or requirements which may impact District's review and approval of the Request for Common Use.
- (3) District Review and Approval of Request for Common Use. District's General Manager or designee shall review each Request for Common Use. Within thirty (30) days of receipt of a request, the General Manager shall provide City with a written response: (a) responding to City's Request for Common Use and requesting such other information as it deems needful to move forward with Recreational Trail segment planning; (b) identify circumstances under which space constraints, Operation and Maintenance, and/or safety issues limit the proposed construction of a Recreational Trail; and (c) provide conditions, if any, upon which an approval by District of the Request for Common Use could be based.
- (4) Submission of Construction Documents. Following receipt of District's response and any follow up discussions among City and District, City shall prepare and submit to District for review and comment, schematic (30%), design development (60%), and construction document (90%) level plans and specifications; and final 100% signature level plans and specifications. City shall address District's comments, concerns and issues raised by District, to District's satisfaction.
- (5) Draft Common Use Agreement. District shall submit a draft Common Use Agreement ("CUA") with its review comments to City's schematic design (30%) level documents based on the template thereof attached hereto as **Exhibit A**. Any City changes to the draft CUA shall be submitted in a track changes comparative format to show changes the City is proposing.
- (6) Approval of Construction Documents; Common Use Agreement. The Parties shall work together to obtain District's final approval of Construction Documents and negotiate

any special terms to be contained in the CUA. After District approval of the Construction Documents, City shall approve and execute duplicate originals of the Common Use Agreement, and deliver them to District for consideration.

By approval of this Agreement, and consistent with City Engineer authority previously granted by the City Council, the Council authorizes the City Engineer to approve and execute the CUA except when the CUA involves a Cross Over Trail or unusual circumstances that warrant separate consideration by the City Council, as determined by City.

(7) Payment of Fees and Permits. City or its contractor shall be responsible to remit payment for District's plan review fees. After payment of the fees and execution of the Common Use Agreement by District, City's contractor may pull construction/access permits from District, at District's standard fee schedule expense.

(8) Review of Plans Solely for Benefit of Reviewing Party. Each party acknowledges and agrees that the other Party's right to review any plans, specifications or construction under this Agreement: (a) is solely for the benefit of the reviewing Party; (b) shall not assign to the reviewing party any responsibility for the safe and proper construction of the facilities in question; and (c) shall not result in the reviewing party's assumption of any liability for such facilities.

h. Construction of Improvements.

(1) Construction of Improvements. City shall comply with all federal, state or other laws, rules, regulations, directives or other governmental requirements in any form as administered by appropriate authorities, regarding environmental matters, and specifically those relating to pollution control and to materials and chemicals which may be inimical to human health or the environment, which may be applicable to its construction, installation, operation, or maintenance of Recreational Trails and Improvements within an Area of Common Use or on property owned by the City adjacent to, alongside, crossing, articulating/intersecting with or atop District ROW's or otherwise impacting same.

(2) Acceptance of Work by District. City shall provide notice prior to and immediately after construction of any City Improvement undertaken pursuant to a Common Use Agreement so District's engineers may inspect aspects of the construction associated with the Canal System, if any, and verify that the Improvements meet with the mutually approved plan as built, and intended to be operated. District shall not unreasonably withhold approval of Improvements.

i. Limitations of Common Use. The Parties agree that in some instances where City seeks common use of portions of the Canal System, District may not have the readily ascertainable legal title to grant an interest in real property to City to share; and, that any such authorization of common use may be subject to legal challenge.

(1) Challenge to Common Use. Should District's Real Property Interests in an Area of Common Use be challenged, City shall, at its sole expense, defend and hold District harmless

in resolving such claim, ownership or consent by District for the benefit of District. City shall consult with District regarding all critical decisions involved in the resolution of such a challenge.

(2) Notice of Proceedings. City shall provide written notice to District prior to initiating or prosecuting any eminent domain or quiet title proceeding involving a portion of District's Canal System. The notice shall include information regarding City's interest in acquiring fee simple or permanent easements therein and an explanation of how District's interests in the subject lands is to be maintained.

(3) Affirmation of District's Real Property Interests. Any resolution reached by City involving District's Real Property Interests shall include an affirmation of District's permanent right to use its Real Property Interest at issue. City shall use its best efforts as District's fiduciary for purposes of this Paragraph, to acquire for District the District Easement in the form set forth in **Exhibit B**, or alternatively fee ownership if agreed by District and City as the best course of action.

(4) No Obligation to Accept Resolution. District shall be under no obligation to accept any judicial order or settlement on any City-initiated eminent domain or quiet title proceeding where the easement or fee title interests is less than (in size, scope, aspects of uses, rights, titles, interests or extent) District's rights to its Canal System under California Water Code Sections 22438, et. seq., and including the historic scope of uses to which District put the subject property prior to the commencement of the action. District will be the real party in interest when it comes to an adjudication of District's Real Property Interests affecting the subject parcel(s).

(5) Rights Nonexclusive. This Agreement is entered subject to all rights previously acquired by third parties, but no other third-party rights are intended to be conveyed or acknowledged herein save those expressly and individually identified and granted. The rights and privileges granted by this Agreement are nonexclusive and will not prohibit District or City from entering into agreements with other parties that do not conflict herewith.

j. Additional City Obligations. It is the intent of the Parties to this Agreement that all of the Master Trails Agreement indemnities and obligations that are herein assumed by the City for the operation of all existing and future Recreational Trails and Parks herein apply universally to all trails associated with District Canals as that term is expansively used herein and in which FID flows water, (including Big Dry Creek.) As such, from and after the date of this Agreement, all of the indemnities and obligations of this Agreement in favor of the District and applicable to any Recreational and/or Parks uses adjacent or alongside, atop, crossing or articulating/intersecting with or having any impact on any District Canal shall also and likewise be applicable to any and all such portions or segments of any Recreational Trails and Parks along any Canal and trails atop Big Dry Creek stream bed banks thus created, modified, relocated, widened, altered, developed, planned, owned or used by the City or its residents and invitees as well as improvements or installation thereupon, including but not limited to any obligation, liability, indemnification of the City to the District or to the other members of the Fresno Stream Group as provided herein as to all these types of trails within the City's boundaries and/or SOI's.

Therefore, any Recreational Trail and/or Park in the City of Clovis as its City Limits now exist or as the City Limits may hereafter be expanded, (including any current or future City SOI) includes the City's commitment to comply with all of the Master Trail Agreement obligations assumed hereunder by the City, including but not limited to Sections 6, 7 & 11, dealing with trail operation, trail maintenance, park maintenance, canal bank maintenance involving trash removal & litter control, liability, indemnification, policing, homeless, weed abatement, trash, etc.; and, in all cases indemnifying and holding the District harmless under the terms of the Master Agreement. In exchange, the City shall have access to and use of the District's canal banks for pedestrian and recreational trail uses by its residents and invitees under the terms of this Master Trails Agreement and the Common Use Agreements for trail segments that follow.

7. City Maintenance Obligations.

a. Recreational Trails and Parks Adjacent to District ROW. Subject to the cost-sharing agreement(s) by and between the Fresno Stream Group parties, and Section 6.(b), the District shall be responsible for performing tree trimming, tree removal and other maintenance: (1) as called for under the 1946 Fresno Stream Group agreement, as amended, for Big Dry Creek; and, (2) District's normal level of maintenance within the District's Exhibit "C" R/W line on its canal banks except as otherwise provided for in subparagraph 7.(2) below. Also, except as expressly noted herein, (including those discussed in paragraph 1 above and subparagraph b., below) City shall not have any District ROW maintenance obligations under this Section 7 for Recreational Trails and Parks completely outside of any District ROW. City shall comply with City's enforcement obligations set forth in Section 6.d of this Agreement as to such Recreational Trails and Parks. If the District installs a barrier across a Recreational Trail for public safety or District maintenance reasons; or, if the District grants an encroachment agreement to a private landowner whose property line extends to the center of a canal and the landowner requests permission to erect a gate to prevent public use/access across said landowner's fee title lands which blocks public access to that portion of the District's canal bank, then until such time as said gate(s)/obstruction(s) are removed to permit the use of the canal bank as a trail, the City's maintenance obligations hereunder shall be suspended as to such canal bank/Recreational Trail segment but shall resume once such gate(s)/obstructions is/are removed.

(1) Homeless Abatement. Notwithstanding the foregoing, for Recreational Trails and Parks Adjacent to District ROW (including District Canal Banks & District open channel canal banks), City agrees to undertake the full administrative, funding, and enforcement responsibilities to address and resolve issues related to homeless camps and homeless sites and their removal, including but not limited to removing all trash, personal property, waste and hazardous materials from said sites/locations: (i) along any District ROW and/or District Canal Bank adjacent, alongside, atop, overlapping, crossing, articulating, intersecting with any Recreational Trail or Park subject to this MTA, whether or not subject to any CUA, (including District Canal Banks & District open channel canal banks) (ii) that are part of any Area of Common Use under any Common Use Agreement, (iii) that is/are on the opposite side of any Canal Bank which is adjacent, atop, alongside, or crossing or articulating/intersecting with a Recreational Trail or Park; (iv) which is/are part of any Recreational Trail segment used, acknowledged or operated by the City whether or not said Recreational Trail segment is or is not

subject to a Common Use Agreement; or, (v) situations where the planned or existing Recreational Trail or Park might have a proximity to and/or a physical or other impact on the District Canal System whether or not subject to any CUA that are within (a) the City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future. District has no obligation to undertake any administrative, funding, and enforcement responsibilities to address and resolve issues related to homeless camps and homeless sites and their removal, including but not limited to removing any persons, trash, personal property, waste and hazardous materials from any District Canal Bank within the (a) City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future.

2. Litter Control. For Recreational Trails and Park segments adjacent to District ROW (including District Canal Banks & District open channel canal banks) segments whether or not the subject of Common Use Agreements, within the Area of Common Use, including canal banks or any kind of pedestrian trails located adjacent to or alongside, atop, or crossing, articulating/intersecting with or otherwise impacting the District ROW, City shall enforce its anti-littering ordinances along all such Recreational Trails and Parks, provide waste receptacles, and take other reasonable actions within its authority to prevent litter, trash or other material to gather or be deposited on or in Areas of Common Use. For Recreational Trails not governed by Common Use Agreements, the City shall still enforce its anti-littering ordinances and provide waste receptacle and take other actions within its authority to prevent litter, trash or other material to gather or be deposited on or alongside Recreational Trails. If City requests District to undertake litter removal on District Canal Banks, if any, that are not associated with Recreational Trails and Parks as defined hereunder, more frequently than the normal procedures of District, City shall be responsible for and/or reimburse the District for the additional costs associated with the more frequent litter removal. Waste receptacles provided by the City shall be placed in such a manner so as to not interfere with District drive paths on District Canal Banks, at least 15' outside of the top inside hinge of a canal bank to allow for vehicular access up and down the canal bank.

b. Recreational Trails within District ROW. City shall have the following obligations for Recreational Trails within District ROW within the City Limits and/or within the then existing City SOI:

(1) Homeless Abatement. City likewise reiterates its obligation to undertake the full administrative, funding, and enforcement responsibilities to address and resolve issues related to homeless camps and homeless sites and their removal, including but not limited to removing all trash, personal property, waste and hazardous materials from said sites/locations: (i) along any District ROW and/or District Canal Bank adjacent, alongside, atop, overlapping, crossing,

articulating, intersecting with any Recreational Trail or Park subject to this MTA⁷, whether or not subject to any CUA, (ii) that are part of any Area of Common Use under any Common Use Agreement, (iii) that is/are on the opposite side of any Canal Bank which is adjacent, atop, alongside, or crossing or articulating/intersecting with a Recreational Trail or Park; (iv) which is/are part of any Recreational Trail segment used, acknowledged or operated by the City whether or not said Recreational Trail segment is or is not subject to a Common Use Agreement; or, (v) situations where the planned or existing Recreational Trail or Park might have a proximity to and/or a physical or other impact on the District Canal System whether or not subject to any CUA that are within (a) the City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future. District has no obligation to undertake the any administrative, funding, and enforcement responsibilities to address and resolve issues related to homeless camps and homeless sites and their removal, including but not limited to removing any persons, trash, personal property, waste and hazardous materials from any District Canal Bank within the (a) City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future.

(2) Canal Bank Maintenance and Tree Trimming. As noted in subparagraph a. above, the District shall be responsible for tree trimming on: (a) Big Dry Creek as part of the Fresno Stream Group's obligations under the 1946 agreement as amended; and, (b) the balance of District's canal banks within the District's Exhibit "C" R/W line on its Canal System except as otherwise provided for in Section 6.(b). Notwithstanding any other provisions of this Agreement, and subject to the District's determination of impacting or obstructing trees, tree canopies or tree locations within the City Limits affecting District Canal System associated with or impacted by the City's Recreational Trails⁸, and following the District's identification of such impacting or obstructing trees/tree canopies to the City, the City shall be responsible for: (1) the removal of such trees and/or the trimming of such tree canopies that impact or obstruct District access of its personnel and/or equipment on any of its Canal System being used as a Recreational Trail within the City Limits, (2) the removal such trees and/or trimming of such tree canopies within the District's Canal System to the extent that fee title of said Canal Banks segments are vested in the City (and specifically excluding streambeds), (3) the removal of such trees and/or the trimming of such tree canopies that impact or obstruct District access of its personnel and/or equipment on any of its Canal System for trees that were planted by the City; and, (4) the removal of such trees

⁷ Recreational Trails" or "Recreational Parks" include the banks of all District Canals/District open channel canals within City Limits, County islands and City SOI as they now exist as of the date of this Agreement or as same may be expanded which are capable of being used, accessed or crossed by pedestrian or recreational traffic in as comprehensive and all-inclusive definitional scope possible. Any District Canal Bank is a Recreational Trail or Recreational Park for purposes of this Agreement as located above.

⁸ Recreational Trails includes but is not limited to Recreational Trail segments thereof and City Parks within, adjacent to, alongside, atop, or crossing, intersecting/articulating with the District Canal or District ROW or having a proximity to and/or a physical or any other impact on the Canal System and/or Areas of Common Use, and/or affecting District's Canal System; including the use/location/approval or operation of City's Improvements within, across adjacent to, alongside, atop, or crossing, or intersecting/articulating with the District ROW

or trimming of such tree canopies located on or hanging over any District canal ROW used by the City as a Recreational Trails segment which pose a potential hazard to the health and safety of the public, including Trail users. Except as otherwise provided herein and in paragraphs (3) and (4) immediately below, for Recreational Trail segments whether or not being subject to Common Use Agreements, City shall, at its sole expense, be responsible for maintaining the entire Area of Common Use at a level at or better than the maintenance practices of the District particularly keeping the District's drive paths and ROW's free of trees, tree branch intrusions and other obstructions interfering with the District's Exhibit C standards for a 20'-wide drive path at all Canal Bank locations. At its sole expense the City is likewise responsible for litter control within any Area of Common Use whether or not under any Common Use Agreement at the same schedule it maintains for other City rights-of-way. Additionally, the City will apply its normal practices and schedule for maintenance and tree trimming in accordance with budgeted funds, available equipment, and ability to schedule. City shall coordinate such maintenance and tree trimming work beyond the District's normal operation in concert with District's Canal Bank maintenance schedule.

(3) Litter Control. For Recreational Trail segments whether or not the subject of Common Use Agreements, within the Area of Common Use, including canal banks or any kind of pedestrian trails located adjacent to or alongside, atop, or crossing, articulating/intersecting with or otherwise impacting the District ROW, City shall enforce its anti-littering ordinances along all Recreational Trails and Parks, provide waste receptacles, and take other reasonable actions within its authority to prevent litter, trash or other material to gather or be deposited on or in Areas of Common Use. For Recreational Trails whether or not governed by Common Use Agreements, the City shall still enforce its anti-littering ordinances and provide waste receptacle and take other actions within its authority to prevent litter, trash or other material to gather or be deposited on or alongside Recreational Trails. If City requests District to undertake litter removal on District Canal Banks that are not associated with Recreational Trails and Parks, if any, as defined hereunder, more frequently than the normal procedures of District, City shall be responsible for and/or reimburse the District for the additional costs associated with the more frequent litter removal. Waste receptacles provided by the City shall be placed in such a manner so as to not interfere with District drive paths on District Canal Banks, at least 15' outside of the top inside hinge of a canal bank to allow for vehicular access up and down the canal bank.

(4) Weed Abatement. In connection with its Canal Bank maintenance under paragraph (2) above, for Recreational Trail segments that are the subject of Common Use Agreements, City shall be responsible for herbicide spraying within Areas of Common Use on the tops of Canal Banks and down to the water edge to control weed growth in Recreational Trail segments along open canals to the same or better aesthetic look as the District controls weed growth on its Canal Banks opposite the Areas of Common Use. City shall not engage in the application of herbicides below water edge in any canal. For Recreational Trail segments that are not subject to Common Use Agreements, the District shall continue to provide weed abatement spraying in its normal procedures and schedule. If City requests District to undertake enhanced weed abatement spraying on District Canal Banks that are not subject to a Common Use Agreement more frequently than the normal procedures of District or City, City shall be

responsible for and/or reimburse the District for the additional costs associated with the more frequent weed abatement spraying by District as requested by the City.

(5) Dredging Costs. The parties acknowledge that it may be prudent to dredge open canal segments subject to a Common Use Agreement prior to construction of City's Recreational Trail along a segment so as to ultimately reduce the costs associated with maintaining the segment after construction of an adjacent Recreational Trail. For such segments, where the parties agree that dredging would be prudent, the parties agree to share in dredging costs. For Recreational Trail segments to be dredged by the District after the initial construction thereof, dredging costs shall be handled under sub-Section 6 below.

(6) Additional Maintenance Responsibility. City understands that any City Recreational Trail or Recreational Trail segment associated with District's Canal System may result in additional Maintenance and Operational costs to District. Additional work will need to be defined and agreed upon by both parties for City to agree in such situations, to either perform such additional work to the level complying with District standards or to compensate District for the additional costs. This could include tree trimming in areas where trees interfere with District's ROW or drive paths under Exhibit C standards, picking up trash on the Trail side as well as on the Canal Bank on the opposite side of the Recreational Trail more often, renting a rubber track excavator so as to minimize damage for maintenance work performed on the Trail side, putting out signs to close a Recreational Trail segment during maintenance or trash removal, using a pilot vehicle to go before any District equipment working on the Trail side of a Canal Bank, advising the public when canal water may be treated with aquatic herbicides, etc. In non-Common Use Areas on its Canal Banks, District shall maintain and repair areas of canal bank erosion or "sluffing;" while, in Common Use Areas, City shall maintain and repair areas of canal bank erosion of "sluffing" in those areas subject to a Common Use Agreement.

(7) Damage to District Facilities. Subject to any different requirement in a specific Common Use Agreement, City shall repair or replace at City's sole expense any portion of any District facility damaged by City's or the public's activities directly related to the use of Recreational Trails situated in District ROW.

c. District and City Obligations for Respective Facilities; Relocation of Trail.

(1) District and City Owned Facilities. Except as otherwise provided for in this Agreement, this Section or a Common Use Agreement, District and City shall be responsible for the maintenance, repair, alteration, replacement, upgrade, improvement or relocation of their respective facilities. Nothing in this Agreement shall relieve the parties from any responsibility toward the other party for damage to the other party's property located outside of Areas of Common Use. District shall not be responsible for any damage to or for the costs of replacement or repair of any City facility located in District ROW, and City shall indemnify and hold District harmless for any such cost and/or damages, except for any such claims for damage arising out of the negligence or willful misconduct of District or its directors, officers, employees or authorized volunteers, and subject to the other indemnity provisions of Section 11, below.

(2) Relocation of Trail Segment. If desired by District, any District approved Recreational Trail segment within or affecting District's Canal Systems subject to a Common Use Agreement may be relocated in a functionally similar manner. Such relocation shall be with the prior written approval of City, which approval shall not be unreasonably withheld. The costs of such relocation shall be borne by District.

8. City Reimbursement. City shall be responsible to pay, and shall reimburse District upon demand, for any reasonable cost incurred by District for work performed by District that is caused by or required by City's construction, maintenance or use of Recreational Trails situated in District ROW, whether such work was completed at City's expense or as reasonably determined to be necessary by District.

9. Signage. To the extent that the City deems it appropriate, necessary or contributing to the safe use of trails and the directional needs of those using its trails, (including directions to trail users to stay off District ROW's) the City shall prepare and install readily visible signs at Recreational Trail segment entrances or other appropriate locations along each Recreational Trail advising the public generally of the following: (a) the Recreational Trail is located alongside, atop, crossing, or articulating/intersecting with the District ROW's or adjacent to District's Canal System with District's consent; (b) District has reserved the use of and access to the Area of Common Use and its Canal System for Operation and Maintenance; (c) users of the Recreational Trail must yield to District personnel and equipment (and District's contractors) engaged in District activities; (d) swimming, diving, wading, boating, and any other activity in District Canal System is prohibited; (e) public use of motor vehicles or equipment on the Recreational Trail segment is prohibited; (f) disposing of or placing litter, refuse, trash, or any other foreign item or material into or on District's Canal System or District waters is prohibited; (g) the Recreational Trail(s) may be closed from time to time upon request of District or the City during the applications of canal bank and/or aquatic herbicides; and (h) where Recreational Trails exist, the public shall be directed to use said trails and not use or trespass on the District's Canal Banks or canals that have no Recreational Trails.

City may install additional signs regarding the nature of Recreational Trails, assumption of risk, etc.

10. No Warranties; Preservation of District Rights.

a. No Warranties. District does not represent or warrant the nature, existence, or non-existence of its Real Property Interests or of any third-party claim to its Real Property Interests, nor does the execution of this Agreement or any subsequent Common Use Agreement create such a warranty or warranties. City shall accept District's authorization for common use and its execution of any Common Use Agreement as reflective of City's investigation of District's Real Property Interest and City's satisfaction that it is suitable for City's purposes.

b. Paramount Rights of District. Unless otherwise provided herein or in a Common Use Agreement, City's rights under Common Use Agreements are subordinate and subservient

to District's rights in the Area of Common Use. Nothing contained in this Agreement or any Common Use Agreement, shall be construed, implemented or enforced to impair, limit, restrict or otherwise affect District's uses, ownership, rights, authority, powers, and discretion with respect to the Canal System, or to grant or create any rights which interfere with the purpose and uses to which the District's Canal System is used, Operated and Maintained, devoted and/or dedicated.

c. No Right to Convey. City shall have no right, power or authority to grant, allow or suffer any lien or other charge, agreement, easement, use, or encumbrance of any kind against District's right, title, and interest in District's Canal System or any portions thereof other than contained in a Common Use Agreement. City has no right to offer or grant franchise agreements to third party providers which affect District's Canal System or District ROW. City shall not permit, authorize, consent to or convey to any third party any right to use or occupy any aspect of District's Canal System or its Real Property Interests without the prior written approval of District.

d. Not a Public Dedication. Except for the permission to construct, maintain or improve/enlarge/expand/relocate a Recreational Trail (including segments) contained in Common Use Agreements executed pursuant to this Agreement, and except for the Recreational Trail segments not subject to a Common Use Agreement as recognized by this Agreement but which may require a Common Use Agreement in certain future situations, nothing contained herein or in such agreements shall be deemed to constitute a gift or dedication of any portion of District's Real Property Interests or Canal System to the general public or for the benefit of the general public or for any public purpose whatsoever, and nothing contained herein shall be deemed to provide that any Recreational Trail shall be used for any other purpose than as stated herein and in agreements executed pursuant hereto, it being the intention of the Parties this Agreement and any further agreements will be strictly limited to and for the purposes expressed herein. The parties shall be permitted, from time to time, to take whatever reasonable action they deem necessary to prevent any portion of District's Canal System from being dedicated or taken for public use or benefit, including but not limited to any taking by City except as expressly authorized herein.

e. Water Rights. City acknowledges that the waters in District's Canal System are fully appropriated for beneficial use, and the water flows in District's Canal System fluctuate based on demand, diversion and use of water. City shall not attempt to divert or claim the right to diversion or maintenance of minimum stream flows of any water in any of District's Canal System. City shall not in any manner attempt to require District to maintain any flow of water in any of District's ditches, canals or Canal System.

11. Indemnity.

Preamble. City acknowledges that District facilities (Canals, Canal Banks, Rights of Way, etc.) predated any of City's Recreational Trails and City Parks. District is and always has been risk adverse when it comes to any third party approaching or having any access to its Canal System for any purpose. City nevertheless has prevailed upon District and desires to utilize District ROW, including the use of District ROW that may include Recreational Trails adjacent to,

alongside, atop, or crossing, intersecting/articulating with or otherwise impacting a Canal bank, Areas of Common Use, areas subject to a Common Use Agreement; or, other situations where the planned Recreational Trail or Park might have a proximity to and/or a physical or other impact on the Canal System and/or Areas of Common Use (such as City Parks) for portions of City's Recreational Trails. City has assured District that City will assume one hundred percent (100%) of all liability, costs, exposure to loss/damages, and all foreseeable and unforeseeable risks, losses, and all claims for and assertions of damages of any kind and nature associated with City locating, planning, designing, constructing, maintaining, operating and/or allowing for the uses of any Recreational Trail within, alongside, atop, or adjacent to or across any District ROW and any Recreational Trail or Park adjacent to District ROW or in any other situations where the existing or planned Recreational Trail or Park might have a proximity to and/or a physical or other impact on the Canal System and/or Areas of Common Use. This assumption of liability includes any risks and all liability created by or existing on account of City, its contractors, the public, any Recreational Trail users, the District, or any third-party performing any work or maintenance in any aspect of District's Canal System or City's Recreational Trail or segments thereof. District Canal System as used herein and as otherwise and additionally used/defined and/or referred to in Section 11 and elsewhere shall include but shall not be limited to all canals, streams, ditches, and their banks and rights of way, District above-ground infrastructure (excluding underground pipelines), City Recreational Trails, City Parks, Big Dry Creek trails, banks and waterway, Informal Trails, formal trails, and any other trails as widely and expansively defined or used as noted herein and having anything to do with the District Canal System and Big Dry Creek, or any components, stretches or aspects thereof and located within: (a) the City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future.

- a. *(intentionally omitted)*
- b. The City acknowledges that prior to the City's request to use the District's Canal Banks, District ROW or any portions of the District's Canal System for Recreational Trails and/or City Parks (and access thereto or therefrom), the District had no interest in having parks, recreational trails or segments thereof (including public uses thereof) on, within or proximate to any portions of the District's Canal System or any segments thereof. As noted above, in an effort to persuade the District to consider allowing the City to use portions of the District's Canal System in its program for Recreational Trails or access same to or from City Parks, the City has repeatedly and universally assured the District that the City will assume and willingly accept 100% of all liability, costs, exposure to loss/damages, and all foreseeable and unforeseeable risks, losses, and all claims for and assertions of damages from any and all claimants and/or sources associated with the City's locating, planning, designing, constructing, operating, maintaining, and/or allowing for the uses of any Park or Recreational Trail or any segment thereof or adjacent to, atop, alongside, crossing, intersecting/articulating or accessible to or having any impact on any District Canal System or segments thereof in exchange for and in consideration for siting its Recreational Trails as provided for in this Agreement affecting in any manner the District's Canal

System components or segments. The District accepts the City's offer with the understanding that in siting, constructing or operating its Recreational Trails or any segments thereof adjacent to, atop, alongside, crossing, intersecting/articulating or impacting in any sense the District's Canal System or any segments thereof, the City assumes 100% of the risk and liability for having done so. All of the risks associated with the City siting, constructing or operating any Park or Recreational Trail or any segment thereof on as provided for herein affecting or impacting any District Canal System or segment thereof as noted in this Agreement belongs 100% to the City, (including any risks and all liability created by or existing on account of the City, its contractors, the public, any Trail users, the District or any third-party performing any work or maintenance any aspect of the District's Canal System or any City Recreational Trail or City Park (including but not limited to the applications of canal bank or in-canal aquatic herbicides) in, on, adjacent to, atop, alongside, crossing or intersecting/articulating with any City Trail which is in turn near or on any segment of the District's Canal System) which hereby indemnifies and holds the District free and harmless for all consequences arising out of the City's using or siting its Parks or Recreational Trails or any segments thereof in any proximity to the District's Canal System as provided for herein.

City and District are each a public entity to which the Government Claims Act (Gov. Code § 810 et seq.) applies, including immunity for City development, creation, construction, use, maintenance and authorization for Recreational Trails within and adjacent to District's Canal System, District's ROW, or District's Real Property Interests, (including, but not limited to, paved or unpaved trails, walkways, paths, sidewalks, fences, or other similar structures, conditions or uses under Government Code Section 831.4 and 831.8 thereof).

c. Definitions. As used in this Section 11:

(1) "District" includes the Fresno Irrigation District and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control [and the non-City Fresno Stream Group members, in the very limited situation involving the pedestrian or recreational use of Recreational Trail segments on the banks of Big Dry Creek as it runs through the City Limits or within any City SO1]⁹.

(2) "City" includes the City of Clovis and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control.

(3) "Loss" includes claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of

⁹ the non-City of Clovis Fresno Stream Group members (Fresno Irrigation District, County of Fresno, the City of Fresno; and, the Fresno Metropolitan Flood Control District

whatsoever nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses.

d. City Indemnity.

(1) Broad Indemnity. To the maximum extent provided by law, statute or agreement, City agrees to indemnify, hold harmless and defend District and its directors, officers, employees, agents, contractors, partners and the heirs, personal representatives, successors, and assigns of each of them (collectively District) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from: (a) the terms and performance of this Agreement and any agreement executed hereunder; (b) City's locating, planning, designing, constructing, operating, maintaining, and/or allowing for the uses of any Park or Recreational Trail (including Recreational Trails, segments thereof and City Parks) within, adjacent to, alongside, atop, or crossing, intersecting/articulating with the District Canal or District ROW or having a proximity to and/or a physical or any other impact on the Canal System and/or Areas of Common Use, and/or affecting District's Canal System; (c) the use/location/approval or operation of City's Improvements within, across adjacent to, alongside, atop, or crossing, or intersecting/articulating with the District ROW; (d) any challenge from any source to District's Real Property Interests; (e) any damage, loss, injury or claims by any third party accessing any part of the Canal System by way of any part or access point of a Park or Recreational Trail or invited (intentionally or unintentionally) by the presence of any Recreational Trail segment; (f) the use of such Park or Recreational Trails and facilities (including all Improvements) within, across, adjacent to, alongside, atop, or crossing or intersecting/articulating with the District ROW by any third party or member of the public as those facilities and Improvements are being herein made available by City, provided nothing herein shall constitute a waiver by City (or any waiver, secondarily, by District) of governmental immunities including, but not limited to, California Government Sections 810 et seq. and Government Code Section 831.4., 831.8, etc. District Canal System as used herein and as otherwise and additionally used/defined and/or referred to herein shall include but shall not be limited to all canals, streams, ditches, and their banks and rights of way, District above-ground infrastructure (excluding underground pipelines), City Recreational Trails, City Parks, Big Dry Creek trails, banks and waterway, Informal Trails, formal trails, and any other trails as widely and expansively defined or used as noted herein and having anything to do with the District Canal System and Big Dry Creek, or any components, stretches or aspects thereof and located within: (a) the City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future.

(2) Inclusive Indemnity. The broad indemnity set forth above, includes, without limitation, the following:

- (a) The City being one hundred percent (100%) responsible for any and all consequences to its invitees or any users of Parks or Recreational Trails located within, across, or adjacent to District ROW.

- (b) Any and all Loss, even if groundless, fraudulent, or false, directly or indirectly arising out of or related to City's construction, maintenance, operation, location, relocation, or removal of a Recreational Trail (or any segment thereof), and the location of any Recreational Trail (or any segment thereof) within, alongside, atop, across, or adjacent to District ROW
 - (c) Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s). Such person or persons include but are not limited to City, District, any user of or invitee on a Recreational Trail (or any segment thereof) and those accessing any District Canal System via any Recreational Trail (or segment thereof), or the agents, contractors, subcontractors, or employees of the foregoing. This indemnity also extends to any claims of any kind and nature arising out of or having any connection with the application of canal bank herbicides and/or in-canal aquatic herbicides by any party, entity, contractor or third party.
 - (d) Damage to or the disturbance, loss, movement, or destruction of property, including loss of use and diminution in value. Such property includes any Canal System or other District facilities on or near District's Canal System (or portions thereof), any property of City or District, or any property in the care, custody, or control of City or District.
 - (e) Removal of person(s) from District's Canal System.
 - (f) Right(s) or interest(s) granted to third parties by the City to use its Recreational Trails which gives opportunity to access any segment thereof and/or any portion of District's Canal System located within: (a) the City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future.
 - (g) Presence, operation, or use of the Recreational Trail (or any segment thereof) or contents escaping therefrom, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss.
 - (h) Violation by City of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal, State, County, regional or local regulations.
- (3) Additional City Indemnity. City shall defend, indemnify, and hold harmless District from and against any and all Loss, even if groundless, fraudulent, or false, directly or indirectly arising out of or related to City's planning, design, uses, construction, maintenance, operation, location, relocation, or removal of a Recreational Trail (or any segment thereof), and the location of any Recreational Trail (or any segment thereof) or any Park on, within, atop or across, or adjacent

to, alongside, or crossing or intersecting/articulating with the District ROW and any Recreational Trail or Park adjacent to District ROW and/or Areas of Common Use, which includes, but is not limited to, any actual or alleged:

- (a) Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s). Such person or persons include but are not limited to City, District, any user of or invitee on a Park or Recreational Trail (or any segment thereof) and those accessing any District Canal System via any Recreational Trail (or segment thereof), or the agents, contractors, subcontractors, or employees of the foregoing (including but not limited to claims relating to the applications by any party, entity, person, contractor or third party of canal bank herbicides and/or in-canal aquatic herbicides);
- (b) Damage to or the disturbance, loss, movement, or destruction of property, including loss of use and diminution in value. Such property includes any Canal System or other District facilities on or near District's Canal System (or portions thereof), any property of City or District, or any property in the care, custody, or control of City or District;
- (c) Removal of person(s) from District's Canal System;
- (d) Activity(ies) by City on District's Canal System, including without limitation the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Recreational Trail (or any segment thereof)s or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith, and any delays or interference with any Canal System caused thereby;
- (e) Right(s) or interest(s) granted to third parties by the City to use its Recreational Trails which gives opportunity to access any segment thereof and/or any portion of the District's Canal System.
- (f) Presence, operation, or use of a Park or the Recreational Trail (or any segment thereof) or contents escaping therefrom, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;
- (g) City's breach of this Agreement or failure to comply with its provisions; and, Violation by City of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal, State, County, Regional or local regulations.
- (h) The foregoing obligations shall apply if the Loss actually or allegedly arises from, relates to, results from, or is caused by, in whole or in part, any act, activity, error, or omission of City with respect to or under this Agreement, including the City's siting of any Park or Recreational Trail (or any segment thereof) on, or adjacent to any District Canal System or portions thereof. The foregoing obligations shall apply even to losses caused by, arising from, relating to, or resulting from, in whole or in part, the actual or alleged misconduct, fault, liability, or negligence of District and/or any third party

- performing any work or maintenance on the District's Canal System and/or the City's Parks or Recreational Trails, and such actual or alleged misconduct, fault, liability, or negligence of District shall not limit, diminish or preclude City's obligations to District in any respect.
- (i) THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF District, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE, ACTIVE, INTENTIONAL AND DIRECT NEGLIGENCE OF DISTRICT AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.
 - (j) District shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any Loss asserted against District.
 - (k) This additional City indemnity extends to all District facilities, infrastructure and District Canal Banks (as most expansively defined) located within: (a) the City Limits, (b) City Sphere of Influence (SOI); or, (c) any Fresno County islands within, surrounded by, contiguous with, bordering, abutting or encompassed in whole or in part or lying within (in whole or in part) any City Limit or City SOI as they currently exist or as they may be expanded in the future.

4. District Negligence or Intentional Act. City shall have no indemnification and defense obligations to the District for a Loss where the Loss is exclusively caused by the sole, active, gross and direct negligence; or, the sole, active, intentional, willful and direct act of District as determined in a final judgment by a court of competent jurisdiction with no contributory negligence, causation, act, participation or contribution from any other party, agency or person.

d. Procedures. Upon written notice from District, City agrees to assume the defense of any Loss described in this Section 11 and shall immediately take such actions as may be necessary and appropriate to protect the interests of District, including the appointment of appropriate and qualified counsel. Any and all counsel selected or provided by City to represent or defend District shall conduct such representation or defense strictly in accordance with District's Defense Counsel Guidelines. In the event counsel selected by City refuses or fails to conduct District's defense pursuant to District's Defense Counsel Guidelines, or in the event District, in its sole discretion, determines a conflict of interest precludes counsel's defense of District, District may replace such counsel with other counsel of District's own choosing. In such event, any and all fees and expenses of District's new counsel shall be paid or reimbursed by City as part of its indemnity obligation hereunder.

District shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any Loss asserted against District.

e. District Indemnification. The District agrees to indemnify, hold harmless, and defend the City, the City's elected officials, officers, employees, agents, contractors, partners and the heirs, personal representatives, successors, and assigns of each of them, (but excluding and

excepting any and all users of the City's Recreational Trails, any untended or unintended invitees or any other persons accessing the Recreational Trail(s) or any segments thereof) from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising solely out of the intentionally harmful acts by the District's employees, agents or contractors in the course of the District's Operation, and Maintenance of its Canal Banks directed exclusively toward the above-enumerated and finite list of City personnel, which list expressly excludes and excepts certain classes of users, invitees and others, other than as authorized under this Master Trails Agreement. Nothing herein shall constitute a waiver by District of governmental immunities including but not limited to Government Code Sections 810 et seq. and Government Code Section 831.4, 831.8, etc.

f. Survival of Provisions. The provisions in this Section shall survive cancellation, termination, or expiration of this Agreement.

12. Applicable Law and Jurisdiction Unaffected. Neither the terms of this Agreement, nor any agreement executed hereunder, nor the parties exercise of any rights or performance of any obligations hereunder, shall be construed or asserted to extend the application of any such governmental requirements or the jurisdiction of any federal, state, or other agency or official to District's ownership, Operation and Maintenance of its Canal System which did not apply prior to and without execution of this Agreement. By entering into this Agreement, District does not create, or exercise legal or other authority, either express or implied, to regulate, control, or prohibit the discharge or contribution of pollutants or contaminants to any groundwater, waters of the State or the United States, or any other destination. Such authority, to the extent that it exists, is possessed and exercised by governmental environmental agencies. By entering into this Agreement, District does not assume any responsibility or liability for any impact upon or degradation of human health or safety or the environment resulting from any activity of the other party, including, but not limited to, City's construction, operation, and maintenance of its Recreational Trails, Improvements and facilities. In the event District is required to comply with any governmental requirements or is subject to the jurisdiction of any governmental agency as a result of authorizing the construction and maintenance of a Recreational Trail and/or Improvements upon its Canal Banks, District shall notify City in writing and the parties shall work collaboratively towards resolution. In any event, if it is determined that City is the cause of such governmental intervention, City shall indemnify, hold harmless and defend District from liabilities associated with the governmental requirements and intervention.

13. Termination of Common Use. City shall provide District written notice upon cessation of use of an authorized Recreational Trail segment within an Area of Common Use subject to a Common Use Agreement. Upon notice of cessation from City, City shall prepare and deliver to District a recordable quitclaim deed in favor of District, using a form approved by District, terminating the applicable Common Use Agreement and City's uses thereunder. The acceptance and recordation of the quitclaim deed by District shall be predicated on all terms and conditions of this Agreement being in compliance by the parties as to such Recreational Trail segment at the time that it is tendered to District, and acceptance by the District shall be at the District's sole election. Prior to District accepting any Quitclaim Deed or abandonment of a Recreational Trail

segment, City shall restore the Canal Bank to its pre-Common Use Agreement condition per District’s specifications and conditions.

14. Miscellaneous.

a. Specific Performance. Each party agrees that the other party may not have an adequate remedy at law if this Agreement is not performed in accordance with its terms, and that any damages available at law for breach of this Agreement would not be an adequate remedy. Therefore, each party’s obligations not otherwise susceptible to an adequate remedy under this Agreement are enforceable by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith. These remedies and all other remedies provided for in this Agreement are cumulative and not exclusive and are in addition to any other remedies that such party may have under this Agreement.

b. Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the parties, at its own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other party, to evidence or carry out the intent of this Agreement.

c. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. Due to the complexity of this Agreement, the parties shall agree upon a memorandum of interpretation (“MOI”) to accompany each party’s respective staff reports for legislative body approval of this Agreement. However, in the event of dispute regarding any term or its meaning as between this Agreement and the MOI, that the parties are unable to resolve, this Agreement and its terms and provisions shall be controlling.

d. Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

e. Interpretation. It is agreed and acknowledged by the parties that this Agreement has been arrived at through negotiation, and that each Party has had an opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

f. Professionals’ Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys’, paralegals’, accountants’, and other professional fees and costs incurred in connection with such action or proceeding.

g. Termination. Either party may terminate this Agreement by providing thirty (30) days written notice to the other. Any existing Common Use Agreement shall be subject to the provisions of Section 13, Termination of Common Use. In the event of termination of this Agreement the City's indemnity obligations set forth in Section 11 shall survive termination of this Agreement: (1) for any obligations incurred prior to termination; and, (2) the City shall continue to indemnify the District for any and all recreational non-District uses of the District facilities (under the provisions of Section 11) within the City's limits, SOI and encircled County islands, perpetually

h. Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given: (1) on the date of service, if served personally on the person to whom notice is to be given; (2) on the date of service if sent by telecopier or e-mail (with acknowledgement of receipt), provided the original is concurrently sent by first class mail, and provided that notices received by telecopier or e-mail after 5:00 p.m. shall be deemed given on the next business day; (3) on the next business day after deposit with a recognized overnight delivery service; or (4) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To District: Fresno Irrigation District
 2907 South Maple
 Fresno, CA 93725-2218
 Attn: General Manager

To City: City of Clovis
 1033 Fifth Street
 Clovis, CA 93612
 Attn: City Engineer

A party may change its address for notices by providing notice to the other party as provided above.

i. No Claims Created. Nothing in this Agreement or any agreement executed or permit issued pursuant to this Agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by either party hereto or any third party against either party hereto.

j. Construction, Binding Effect. This Agreement shall be construed and enforced in accordance with the laws of the State and shall be binding upon and inure to the benefit of the parties hereto and their respective successors. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Agreement shall remain in full force and effect. The parties represent and warrant to each other that they each have authority to enter this Agreement.

k. Dispute Resolution. The Parties agree to implement the provisions of this Agreement in a reasonable, good faith manner. The parties shall engage in mediation through a mutually acceptable mediator prior to institution of legal proceedings to resolve any issues pertaining to the provisions of this Agreement. The Parties shall each pay fifty percent (50%) of all fees and costs charged by such mediator, with each side bearing its own cost of representation.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date written above.

FRESNO IRRIGATION DISTRICT

CITY OF CLOVIS

By _____
Ryan Jacobsen, President

By _____
Jose Flores, Mayor

By _____
Bill Stretch, General Manager

By _____
John Holt, City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
Jeff Boswell, General Counsel

By _____
Karey Cha, City Clerk

APPROVED AS TO FORM:

By _____
Scott G. Cross, City Attorney

//
J:\WDOCS\006 Eng\Agencies\Clovis\Master Trails\FID redline 4 7_21

**Exhibit A to Master Trails Agreement:
Common Use Agreement**

Recording Requested By
And When Recorded Mail To:

FRESNO IRRIGATION DISTRICT
2907 South Maple
Fresno, CA 93725

The undersigned grantor(s) declare(s):
DOCUMENTARY TRANSFER TAX IS \$ 0

LOCATION:
APN:
CANAL:
PROJECT: [*Ex: _____ Trail – Phase I*]

**COMMON USE AGREEMENT
(Pursuant to Master Clovis Trails and Right-of-Way Use Agreement)**

This Common Use Agreement (“Agreement”) is made effective as of ____, 20__, between the Fresno Irrigation District, a California irrigation district (“District”) and the City of Clovis, a California municipal corporation and general law city, with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. City and District are parties to that certain Master Clovis Trails and Right-of-Way Use Agreement, dated _____, 2021 (“Trails Agreement”), which is incorporated herein by reference. All defined terms not otherwise defined herein shall have the same meaning provided in the Trails Agreement.

B. Pursuant to the Trails Agreement, the parties are to enter into a common use agreement (“CUA”) for each individual segment of the City’s Recreational Trails (i) upon the City’s initiation of any improvements to trails or pathways on canal banks with the City Limits from and after execution of the Master Trails Agreement (sometimes “Trails Agreement” or “MTA”); or, (ii) at such times as stretches of any District Canal Banks are annexed into the City and are associated with any kind of trail or pathway used for pedestrian and/or recreational purposes, unless waived by the District in either situation.

C. City desires to expand its Recreational Trail System on portions of District ROW as identified and depicted in **Attachment 1** hereto (“Area of Common Use”).

D. District is the owner of a pre-existing Real Property Interest underlying the Area of Common Use, as described in **Attachment 2** hereto for its use in connection with the construction, maintenance, operation and use of a portion of District’s Canal System and incidental appurtenances, known as the _____ (“District Easement”).

E. City has reviewed the District Easement and has concluded that it is comfortable acquiring a right-of-way interest in favor of the City for its recreational trail via a Common Use Agreement with District; or if the City feels it is not comfortable with the District Easement City can abandon this Common Use Agreement for this particular Recreational Trail segment; or if the District Easement is subject to challenge, City shall follow the procedures set forth in Section 3 of the Trails Agreement (Acquisition of Recreational Trail Site and District Easement) for obtaining a District Easement from the adjacent property owner or the procedures in Section 6i (Limitations of Common Use) for affirming District’s Real Property Interests.

F. City’s proposed Recreational Trail Improvements are set forth in **Attachment 3** hereto, which also depicts and describes both the District Easement and the overlapping Area of Common Use.

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

1. Area of Common Use.

a. District’s Controlling Rights. Subject to the controlling terms of the Trails Agreement, City affirms the District’s perpetual right to the District Easement; and, District as provided for herein hereby consents to the use, in perpetuity, by City of the Area of Common Use for purposes of constructing, maintaining and operating City’s Improvements that do not unreasonably interfere with District’s use of its own facilities or the District Easement. City’s use of the Area of Common Use shall be subject to the District Easement (or ownership/control) and to the terms and conditions herein contained. District does not by this Agreement subordinate any rights it may have in the Area of Common Use to any use which City shall make of the land. District does not by this Agreement agree to any third-party utility or other third-party uses within the Area of Common Use which the City shall make use of the land without the express advance written consent first had and obtained from District. City acknowledges that by this Agreement, District is making no representation or warranty regarding the existence or non-existence of any third parties claiming a right, title or interest in the Area of Common Use. All aspects of this Agreement are subject to the controlling provisions of the Master Trails Agreement to which this and other Common Use Agreements for City Recreational Trails are subject as to all aspects thereof, the terms of which are herein referenced and incorporated herein by said reference except as to those expressly modified herein.

b. City Improvements. City shall, at its own cost and with District's prior approval, locate, construct, and maintain the Improvements in the Area of Common Use in such a manner and of such material as may be required so that it will not at any time be a source of danger to or interference with the present or future uses of District. City is specifically required to coordinate the construction of the Improvements so that it does not interfere with District's water delivery and maintenance schedules. The constructed facilities shall be in conformance with the construction plans titled "Plans and Specifications for the Construction of Recreational Trails Improvements on _____" ("Plans"), dated _____, as prepared by City and approved by District and shall be subject to any special conditions applicable and indicated therein. In addition, any trees that are part of any landscape improvements by City, if approved by the District, shall be located a minimum of five (5) feet away from the adjacent outside edge (hinge point) of District's _____ canal as indicated on the above-referenced Plans and Specifications approved by District. Trees located outside of the outside hinge point shall be trimmed by the City to provide a minimum 20'-wide clear and unobstructed drive path on the District Canal Banks measured from ground level to the sky so as not to interfere with District equipment access, clearance and operation.

c. Non Liability of District for Approval of Plans. As provided for in the Master Trails Agreement, the right of District to approve Construction Documents is solely for the benefit of District and is not intended to assign to District any responsibility for the safe and proper construction of the Improvements, such responsibility and liability being entirely assigned to City. Approval by District of Construction Documents shall not result in an assumption of liability for the Improvements.

d. Ownership of Improvements and Facilities. As provided for in the Master Trails Agreement, all of the Improvements constructed or installed pursuant to this Agreement shall be the property of City, and all appurtenances and facilities installed by District or existing in the Area of Common Use which are related to District's facilities shall be the property of District. Except as herein otherwise provided, neither District nor City shall have any right, title, or control over the other's property. In the event that City ever vacates or abandons its Improvements, or in the event that District ever vacates or abandons its appurtenances and facilities existing or installed by District, the vacating/abandoning party shall record a document acknowledging the ongoing uses of the other party in the Area of Common Use previously shared by the parties so as not to work an abandonment or vacation of the interests of the other party.

e. Non-Interference. Except as expressly set forth herein, this Agreement shall not in any way alter, modify, or terminate the District Easement in the Area of Common Use. Both District and City shall use the Area of Common Use in such a manner as not to unreasonably interfere with the rights of one another and nothing herein shall be construed as a release or waiver of any claim for compensation or damages which District or City may now have, or may hereafter acquire, resulting from the construction or alteration of existing facilities or the construction or alteration of additional facilities by either District or City which causes damage to or unreasonable interference with the use of the Area of Common Use by the other party.

f. City Reimbursement. To the extent set forth in the Trails Agreement, City shall be responsible to pay, and shall reimburse District upon demand, for any reasonable cost

incurred by District for work performed by District that is caused by or required by City's construction, maintenance or use of the Improvements. District shall provide reasonable advanced written notice of the necessity of such work prior to commencement.

g. Maintenance, Repair, Replacement, and Relocation of Facilities. Except as described above, District and City shall be responsible for the maintenance, repair, alteration, improvement or relocation of their respective facilities. District shall not be responsible for any damage to or for the costs of replacement or repair of any City or third-party facility located in the Area of Common Use not specifically approved, in writing by District and in advance of the installation of such third-party facility(ies); and, the City shall be responsible for any maintenance, repair, replacement, alteration or relocation of any third-party facilities the City and the District jointly permit, allow or provide for within the Area of Common Use. City shall indemnify and hold District harmless for any such cost and/or damages except for any such claims arising out of the willful misconduct or sole negligence of District or its directors, officers, employees or authorized volunteers.

h. Outside Area of Common Use. Nothing in this Agreement shall relieve the parties from any responsibility toward the other for damage to the other's property located outside of the Area of Common Use.

i. Indemnity. Reference is made to the terms of the Master Trails Agreement to which Common Use Agreements for Recreational Trails are subject and subordinate. The Master Trails Agreement is controlling as to all aspects hereof, including the allocation of risk, insurance, liability, indemnity, use, etc., including all of the provisions and terms found in Section 11 of the Master Trails Agreement which are referenced, adopted, restated and included as though fully set forth herein, and which will persist even if a CUA or the MTA are terminated.

j. Notice of Performing Work. As also provided for in the MTA, except in the event of an emergency, or as necessary to maintain the flow of water in District's canal or pipeline, each party shall give the other reasonable notice before performing or permitting any work affecting the other's facilities in the Area of Common Use, and shall furnish the other party with plans and specifications describing the work to be done beforehand. The reviewing party shall have the right to specify reasonable conditions on, or changes in, the proposed work and schedule when necessary to prevent damage to its facilities or interference with its operations in the Area of Common Use. Where such changes shall result in additional expense, such expense shall be borne by City. Neither party shall permit installation of facilities by others in the Area of Common Use without the written consent of the other party.

Each party agrees to repair any damage to the other party's facilities caused by work directed or performed by it within the Area of Common Use, except where City's facilities within the Area of Common Use must necessarily be damaged, destroyed or removed by District to accommodate repair, maintenance, modification or replacement of District's facilities, District shall have no obligation to restore City's affected facilities.

In the event of an emergency, either party may proceed to do what is reasonably necessary to prevent serious loss or damage and to protect the public health and safety. An emergency shall be deemed to exist if immediate action is reasonably required to prevent serious loss or damage to life or property, or to protect the public health and safety.

k. Access. In all events, the District's and the City's unrestricted access (ingress/egress) to and from the Area of Common Use and the District's unrestricted access (ingress/egress) to and from its Canal System shall be provided for and protected in keeping with the Trails Agreement (including sections 4c, 5c, 6e, 6g(2)(a) thereof) and the exhibits hereto.

3. Default. In the situation of a violation of any term of this Agreement the aggrieved party shall have all remedies available at law or equity, including the right to enforce District's right to unimpeded use of the Area of Common Use. Unless otherwise agreed upon by the parties in writing, City shall be entitled to up to ninety (90) days to cure any default under this Agreement, following the date on which it receives written notice of said default from District. Should City fail to initiate cure within the allotted, or otherwise mutually agreed-upon time frame (memorialized in writing), District may cure and invoice City for all costs actually incurred to cure the default, No termination of this Agreement shall release the other party from liability hereunder, whether of indemnity or otherwise.

4. Time and Computation of Time. Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code Section 10, which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded."

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties other than the Trails Agreement which is controlling as to this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto.

6. Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

7. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

8. Binding Effect. This Agreement shall "run with the land" and be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

9. Interpretation. It is agreed and acknowledged by the parties that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the

terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

10. Professionals' Fees. Consistent with the Trails Agreement, the prevailing party in any in any action or proceeding shall be entitled to their professional fees.

11. Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any party to this Agreement.

12. Survival. Each of the terms, provisions, representations, warranties, and covenants of the parties shall be continuous and shall survive the consummation of the transactions contemplated in this Agreement.

13. Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of service, if served personally on the person to whom notice is to be given; (b) on the date of service if sent by telecopier or e-mail (with acknowledgement of receipt), provided the original is concurrently sent by first class mail, and provided that notices received by telecopier or e-mail after 5:00 p.m. shall be deemed given on the next business day; (c) on the next business day after deposit with a recognized overnight delivery service; or (d) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To District: Fresno Irrigation District
2907 South Maple
Fresno, CA 93725-2218
Attn: General Manager

To City: City of Clovis
1033 Fifth Street
Clovis, CA 93612
Attn: City Engineer

A party may change its address for notices by providing notice to the other parties as provided above.

14. Termination. Consistent with the Clovis City Trails Agreement and except as otherwise provided in Section 3 above, this Agreement shall not be terminated without the mutual agreement of the parties. In the event of a violation of any terms of this Agreement, the parties agree to attempt resolution and cure in good faith in accordance with the provision noted above.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date written above.

FRESNO IRRIGATION DISTRICT

CITY OF CLOVIS

By _____
Ryan Jacobsen, President

By _____
[City Engineer or Mayor]

By _____
Bill Stretch, General Manager

By _____
[If Mayor, City Manager]

APPROVED AS TO FORM:

ATTEST:

By _____
Jeff Boswell, General Counsel

By _____
Karey Cha, City Clerk

APPROVED AS TO FORM:

By _____
Scott G. Cross, City Attorney

EXHIBIT "A"
Area of Common Use

PROJECT: [Ex: _____ *Trail – Phase I*]

[*Legal description and depiction*]

EXHIBIT B
(description of District's Easement)

EXHIBIT "C"
Description of Improvements

**Exhibit B to Master Trails Agreement:
Easement Deed**

Documentary Transfer Tax -- \$0.00

RECORDING REQUESTED BY

**AND WHEN RECORDED MAIL TO
FOR THE BENEFIT OF**

**FRESNO IRRIGATION DISTRICT
2907 SOUTH MAPLE AVENUE
FRESNO CA 93725-2218**

Recording Information

GRANT OF EASEMENT

LOCATION: _____
APN: _____
CANAL: _____
PROJECT: _____

THIS INDENTURE and GRANT OF EASEMENT is made and entered into this _
day of _____, 20__, by and between _____, hereinafter referred to as
“GRANTOR”, and the FRESNO IRRIGATION DISTRICT, a California irrigation district,
hereinafter referred to as “DISTRICT”;

WITNESSETH:

1. For a valuable consideration, receipt of which is hereby acknowledged, GRANTOR does hereby grant unto DISTRICT, its successors and assigns, a perpetual and exclusive easement and right-of-way to construct, install, operate, maintain, alter, repair, improve, reconstruct, access, inspect, clean, reconfigure, redesign, traverse and/or pipe: canal(s), ditches, pipelines turnouts, gates, structures, conduits, meters, valves, measuring and/or telemetric control devices or structures, monitoring stations/devices, power lines, poles, panels and/or equipment, pumps or any other accouterments or security structures (“Improvements”) the DISTRICT deems helpful or necessary in connection with its rights granted under this GRANT OF EASEMENT (all hereinafter “Improvements”) as determined by the DISTRICT and to flow and conduct water through said pipes, canals, conduits, structures and Improvements across, over, through and under that certain real property owned by GRANTOR in the County of Fresno, State of California, more particularly described as follows:

_____.

EXCEPTING THEREFROM _____.

TOGETHER WITH _____.

SAID EASEMENT also permits and authorizes DISTRICT the right to enter into any Common Use Agreement with the City of Clovis whereby the City of Clovis will have the right to construct, maintain, operate and use recreational trails within the DISTRICT’s EASEMENT whereby certain uses thereof will be permitted to the City of Clovis by the DISTRICT under the terms of a Master Trails Agreement and Common Use Agreement by and between DISTRICT and the City of Clovis. GRANTOR hereby consents to DISTRICT granting such rights to the City of Clovis under such arrangement.

2. Said easement and right-of-way is as shown on EXHIBIT “A” and EXHIBIT “B” attached hereto and described as follows:

See EXHIBIT "A" and as shown on EXHIBIT "B"

3. Said easement and right-of-way shall include all rights necessary, convenient or incidental to the use thereof as determined by the DISTRICT including the right of unrestricted ingress to and egress from said easement, Improvements and right-of-way so described over and across said real property owned by GRANTOR at such times and locations and for such equipment, material, personnel and vehicles as determined by the DISTRICT.
4. All canals, pipes, pipelines, conduits and other facilities (“Improvements”) constructed, installed and/or placed by or for DISTRICT upon and within said easement shall become and remain the property of DISTRICT and shall be maintained by DISTRICT at DISTRICT’S expense and GRANTOR shall have no right, title or interest therein.

5. When said canals, pipes, pipelines and other structures or facilities (“Improvements”) shall be constructed, installed, operated, maintained, altered, repaired, improved, reconstructed, accessed, inspected, cleaned, reconfigured, redesigned, traversed, piped, etc., the manner in which they shall be installed, constructed and/or placed by or for the DISTRICT; and, the time and manner for conducting and discharging water through the same shall be in the sole, exclusive and absolute control of DISTRICT. If DISTRICT fails to undertake the placement or construction of said Improvements within a term set by the DISTRICT and/or thereafter determines that the easement is not needed, DISTRICT will abandon the easement by recorded document signed by the DISTRICT. Said easement shall not be deemed abandoned by DISTRICT until and unless such DISTRICT-executed document formally abandoning the easement is recorded.

6. DISTRICT hereby allows, to GRANTOR, the right to use the surface of the land within said easement for its own purposes, so long as said use by GRANTOR does not interfere in any way with the use of said easement by DISTRICT for the purposes for which said easement is granted (and so long as GRANTOR does not interfere with any aspect of any Common Use Agreement(s) entered into by DISTRICT and the City of Clovis within the easement for the City’s recreational trails and improvements thereto); and, provided further that GRANTOR shall not build or construct any building or other permanent structure on or plant or to allow or permit the growth of any vegetative materials (including trees) within said easement without the written permission and consent of DISTRICT, which permission may be withdrawn at any time by the DISTRICT if GRANTOR’s activities or improvements interfere with the DISTRICT’s easement. DISTRICT shall have the right, without notice, and at GRANTOR’S expense, to modify any of Grantor’s surface uses and/or to remove any structures, fences, gates, trees or vegetative materials or other encroachments from said easement which interfere at any time with the purpose or use of said easement from time to time as determined by the DISTRICT. Any improvement authorized or approved by DISTRICT within the Easement Area under a CUA ,including a permanent structure, shall not be subject to removal by DISTRICT without the written concurrence by the City of Clovis, unless the CUA is terminated by the City.

7. ***[Optional if temporary use of the GRANTOR’s property is anticipated for temporary construction outside of the normal easement area]*** *It is anticipated by GRANTOR and DISTRICT that circumstances may arise in DISTRICT’s use of these easements that construction, maintenance and other activities may involve materials, equipment and/or personnel having to be mobilized on, delivered to, stockpiled and/or accessed for the work contemplated by grantee DISTRICT in the easement area(s). In such events, DISTRICT shall use its best efforts to inform GRANTOR of the scope of DISTRICT’s work, including, perhaps, a request of GRANTOR to accommodate some of this mobilization/delivery/storage of materials and equipment in areas potentially and temporarily outside of the easement areas, provided that such temporary use(s) of such property shall not unreasonably interfere with GRANTOR’s use of its non-easement areas; and, meet with GRANTOR’s permission for such temporary uses outside of the easement areas. GRANTOR’s permission for such temporary uses outside of the easement areas shall not be unreasonably withheld*

- 8. GRANTOR will arrange for any secured lienholder having an interest in the Property subject to any easements granted hereunder to submit a recordable, fully executed Subordination Agreement in form and substance acceptable to the DISTRICT to be recorded contemporaneously herewith to subordinate any such lien to the easement(s) and rights of way and other interests herein conveyed to the DISTRICT as a condition to the DISTRICT accepting this easement.
- 9. This GRANT OF EASEMENT described herein in favor of the DISTRICT shall constitute a covenant running with the land and shall be interpreted and administered by this Agreement as an easement under California law, and California Civil Code Sections 801, 1104, and 1468 et seq. and be interpreted consistent with California Water Code Section 22438. The easements contained herein shall run with the land and shall be binding on all parties and persons claiming under them including all tenants and successors, assigns, and transferees of any party.
- 10. Should any action or proceeding be commenced by a third party against the DISTRICT or the City of Clovis concerning this GRANT OF EASEMENT, or the rights and duties of any party in relation thereto, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

IN WITNESS WHEREOF, the undersigned have caused this GRANT OF EASEMENT to be executed the date hereinabove written.

“DISTRICT”

“GRANTOR”

The Fresno Irrigation District, a California irrigation district

By: _____

By _____
Ryan Jacobsen, President

By: _____

By _____
William R. Stretch, Secretary

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from _____ to Fresno Irrigation District, a California irrigation district, is hereby accepted by the undersigned officer or agent on behalf of the Board Of Directors pursuant to authority conferred by resolution of the Board of Directors adopted on _____

Dated _____

By: _____

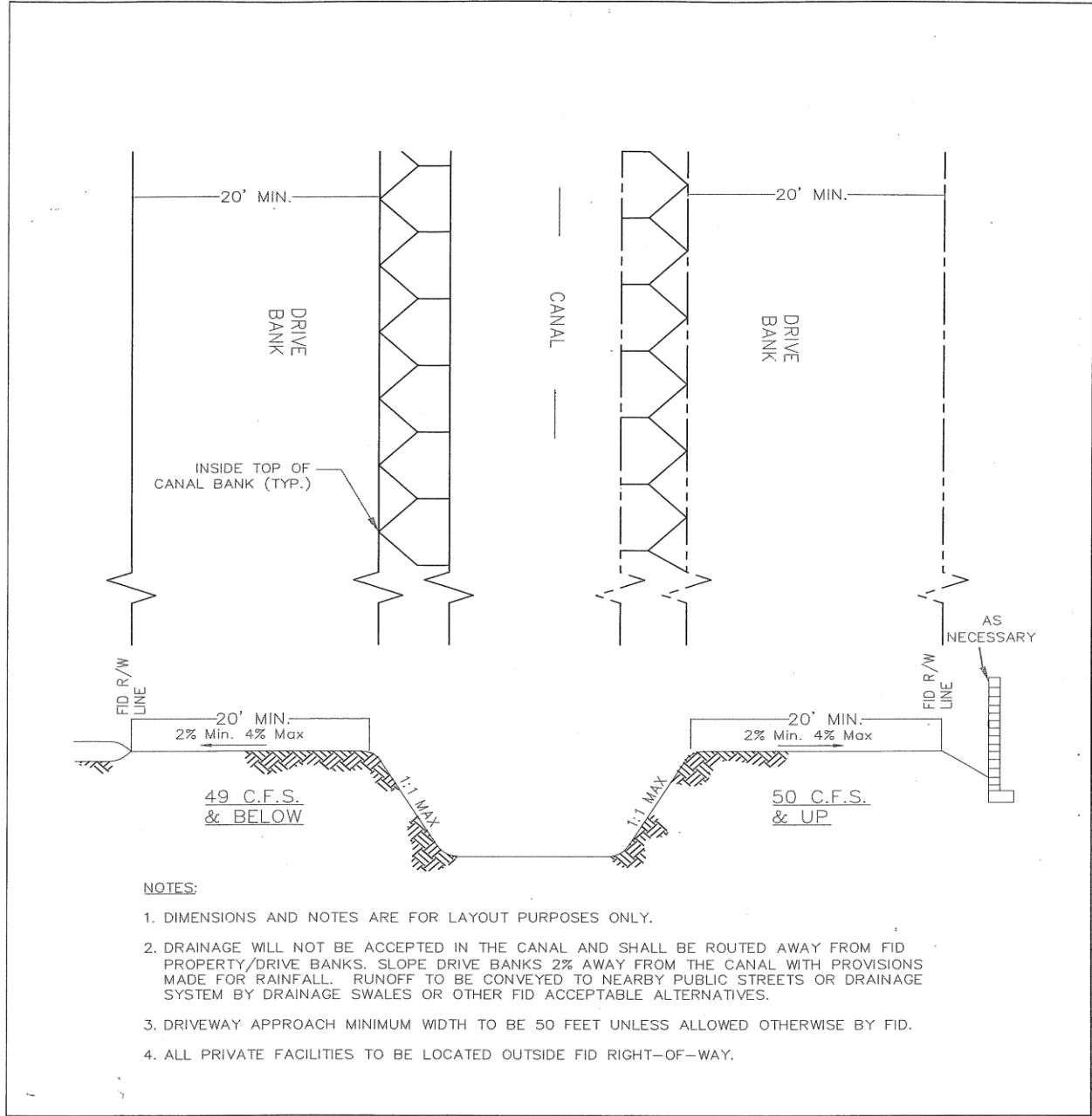
*WILLIAM R. STRETCH, Secretary
Fresno Irrigation District*

EXHIBIT "A"
Legal Description of Grantor's Property

EXHIBIT "B"

Map and/or description of right of way or scope of easement encumbering the Exhibit A parcel(s)

EXHIBIT C - FID canal profile applicable to this Agreement



- NOTES:**
1. DIMENSIONS AND NOTES ARE FOR LAYOUT PURPOSES ONLY.
 2. DRAINAGE WILL NOT BE ACCEPTED IN THE CANAL AND SHALL BE ROUTED AWAY FROM FID PROPERTY/DRIVE BANKS. SLOPE DRIVE BANKS 2% AWAY FROM THE CANAL WITH PROVISIONS MADE FOR RAINFALL. RUNOFF TO BE CONVEYED TO NEARBY PUBLIC STREETS OR DRAINAGE SYSTEM BY DRAINAGE SWALES OR OTHER FID ACCEPTABLE ALTERNATIVES.
 3. DRIVEWAY APPROACH MINIMUM WIDTH TO BE 50 FEET UNLESS ALLOWED OTHERWISE BY FID.
 4. ALL PRIVATE FACILITIES TO BE LOCATED OUTSIDE FID RIGHT-OF-WAY.


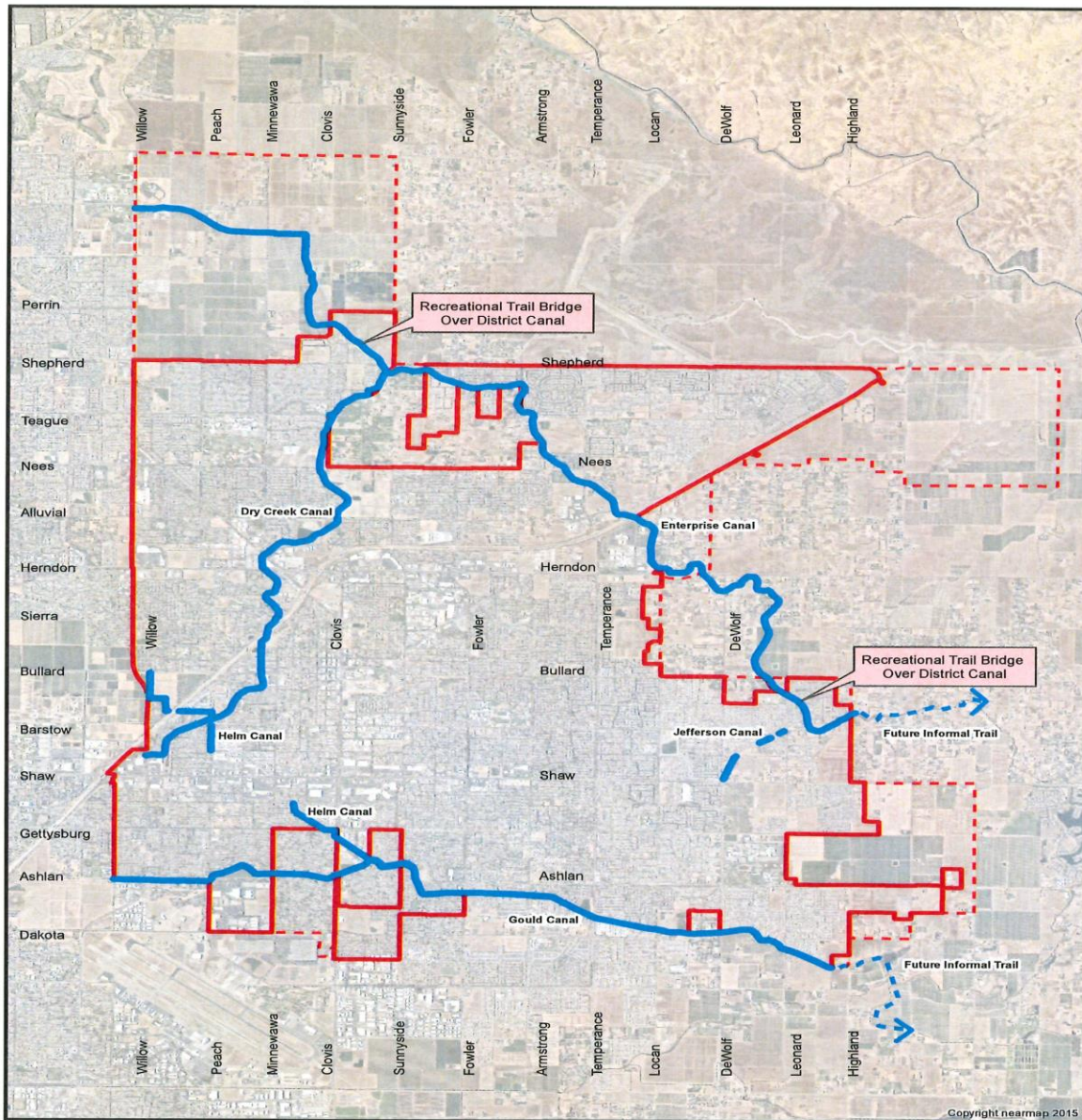
	FRESNO IRRIGATION DISTRICT	EXHIBIT C	
	"Your Most Valuable Resource – Water"	SCALE: NOT TO SCALE	STANDARD DETAIL
		DATE: JUNE 2020	SHEET OF

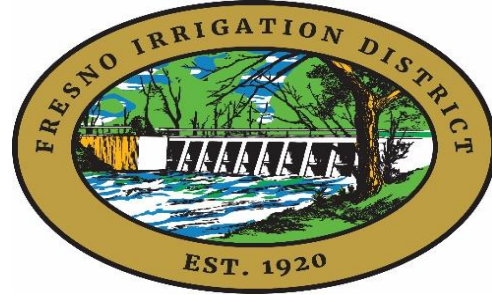
EXHIBIT E: This Exhibit E contains several maps illustrative of some but not all of the situations that arise with FID Canals/ROW vis-à-vis City Recreational Trail segments, noting that these and other similar situations are all intended to be interpreted as Recreational Trail segments articulating or intersecting with FID Canals under this Master Trails Agreement as defined therein and illustrated by these examples:



CITY of CLOVIS



Legend	Exhibit E	
City Limits	Informal Trail Exhibit	
City Sphere of Influence		
District Canal Banks used as Informal Trails		Master Clovis Trails and Right-of-Way Use Agreement



January 21, 2022

SUMMARY MEMORANDUM OF INTERPRETATION

2022 MASTER TRAILS AGREEMENT

CITY OF CLOVIS AND FRESNO IRRIGATION DISTRICT

The purpose of this memorandum is to summarize the party's interpretation of key provisions of the Master Trails Agreement ("MTA") concurrently with its adoption and execution. The MTA governs City's recreational use of District ROW (primarily canal banks). Due to the complexity of the MTA, it is important to set forth the mutual intent of the parties in entering into the MTA in an easy to understand mutual interpretation of the primary terms. This will aid City and District staff as they adopt and implement the MTA.

Access to District Canal Banks for Recreational Use

The Enterprise, Gould, Dry Creek, Helm and Jefferson Canal Banks within the City limits of Clovis and the City's Sphere of Influence shall be available to the City for passive recreational use (walking, running, bicycle riding, hiking) as community trails. Only those District Canal Banks open to the public or available for recreational purposes are the subject of the MTA. These community trails shall be commonly referred to as the "Clovis Community Trails". The following limitations ("Limitations") shall apply:

1. The District may restrict access to and uses of the Clovis Community Trails to preserve, protect, and enhance District uses of and access to District Canal Banks.
2. The District may restrict access to and uses of the Clovis Community Trails to protect District infrastructure.
3. The District may restrict access to and uses of the Clovis Community Trails to preserve or maintain public safety, including public water quality safety.
4. The City of Clovis may apply and enforce its rules and regulations governing access to and uses of City parks to the Clovis Community Trails. The City may develop and enforce rules specific for the use of Clovis Community Trails.

The District shall not erect gates or other physical barriers (“Barriers”) adjacent to or across Clovis Community Trails that would prohibit pedestrian access, except as set forth in the Limitations, or as otherwise mutually agreed to between District and City for the use of the Clovis Community Trails.

The District shall not issue encroachment permits or grant permission to adjacent private property landowners to erect Barriers adjacent to or across Clovis Community Trails that would prohibit pedestrian access, except as set forth in the Limitations, or as otherwise mutually agreed to between District and City for the use of the Clovis Community Trails.

To the extent there currently exists Barriers adjacent to or across Clovis Community Trails that prohibit pedestrian access, the District shall use its best efforts to remove, or cause to be removed, such Barriers.

The City and District shall work cooperatively with regards to any Barrier dispute with private property landowners owning lands adjacent to District Canal Banks/Clovis Community Trails.

City Indemnity for Recreational Use of District Property

The City shall hold harmless, indemnify, and defend the District, and its directors, officers, employees, agents, contractors, and partners, from any and all damages and liability associated with the recreational use of the Clovis Community Trails (“Indemnification Obligation”) as more specifically provided for in the MTA. The City’s Indemnification Obligation shall also apply to all City parks and City recreational trails that intersect or connect to a Clovis Community Trail.

The Indemnification Obligation shall be interpreted in the broadest manner legally permissible, and includes without limitation the responsibility of City to pay for any costs, attorneys fees, or other monetary obligations occurred by District arising out of the recreational use of the Clovis Community Trails as more specifically provided for in the MTA.

City Indemnity for Private Property Landowner Disputes

The City shall hold harmless, indemnify, and defend the District, and its directors, officers, employees, agents, contractors, and partners, in connection with any private property landowner dispute relating to the prohibition on the installation of Barriers or the removal of Barriers.

Common Use Agreement for City Improvements to Canal Banks or to Resolve Access Issues

The District may require that the City enter into a Common Use Agreement (“CUA”) for segments of a Clovis Community Trail in the following circumstances:

1. When the City desires to install, improve, move or construct improvements on a segment of a Clovis Community Trail.
2. When the City desires to install, improve, move or construct improvements on or adjacent to a segment of a Clovis Community Trail when on District right of way (“ROW”).
3. When the City desires to construct a pedestrian crossing over or across a District Canal Bank.
4. When necessary to resolve access issues with private property landowners.

5. When the City desires to locate City parks adjacent to District Property, including ROW's and Canal Banks, and the City park will have a direct impact on District Property, unless waived by the District.

A CUA will not be required for any areas outside of District ROW.

Canal Bank Maintenance Obligations

The following maintenance obligations shall apply on Clovis Community Trails:

1. The City shall perform litter control on all Clovis Community Trails. The City's litter control shall be in accordance with City's customary practices for City parks.
2. The City shall be responsible for homeless encampment abatement (which includes trash, personal property, waste and hazardous material-clean up/removal associated with the encampment) on all Clovis Community Trails. This obligation shall apply to both sides of a canal bank to the extent only one side is used as a Clovis Community Trail.
3. The City shall be responsible for tree maintenance (removing/trimming trees and canopies) in City right of way, or otherwise planted by City on District right of way, that impact or obstruct District access to the District's canal system or pose a hazard to the health and safety of the public.
4. The City shall be responsible for weed control and abatement on Clovis Community Trails subject to a CUA due to City improvements on a District Canal Bank. The City's weed control and abatement shall be in accordance with City's customary practices for City parks. For all other Clovis Community Trails atop District Canal Banks, the District shall continue to provide weed control and abatement in accordance with its normal procedures and schedule. If the City requests that the District undertake enhanced weed control and abatement, the additional costs shall be reimbursed by City to District.
5. Except as provided for in the MTA and set forth in this MOI, the District shall continue with its normal level of maintenance and maintenance schedule for litter control, tree maintenance, and weed control and abatement along Clovis Community Trails. The District shall be responsible for all maintenance obligations within the stream bed of a canal and below the water line.
6. Except as provided for in the MTA and set forth in this MOI, the City shall be responsible for all general maintenance obligations on all Clovis Community trails open to the public or available for recreational use, including those mentioned herein, that are above District's normal operations.
7. The City shall have no maintenance obligations for those segments of Clovis Community Trails where a Barrier prohibits public access to that segment.
8. The City shall have no channel or stream bed maintenance obligations within any District canal or canal maintained by the District, unless both parties agree to a mutually funded dredging operation as specifically provided for in the MTA. Obligations relating to tree maintenance in and along the Dry Creek stream bed will be the subject of a separate negotiated plan. The City and District have committed to good faith discussions to develop a 10-year plan to address the Dry Creek stream bed and adjacent canal banks. The City and District's financial obligations for maintenance costs under the 1946 Fresno Stream Group agreement, as amended, is separate and distinct from the maintenance obligations provided for in the MTA and set forth herein.

FRESNO IRRIGATION DISTRICT

CITY OF CLOVIS

By _____
Ryan Jacobsen, President

By _____
Jose Flores, Mayor

By _____
Bill Stretch, General Manager

By _____
John Holt, City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
Jeff Boswell, General Counsel

By _____
Karey Cha, City Clerk

APPROVED AS TO FORM:

By _____
Scott G. Cross, City Attorney

Estimated MTA Maintenance Obligations (Annual Costs)

Maintenance and Cost Items	Enterprise (\$)	Gould (\$)	Big Dry Creek (\$)	Total (\$)
Tree Trimming	\$3,500	\$2,000	TBD	\$5,500
Litter Cleanup	\$18,000	\$12,000	\$9,500	\$39,500
Toter/Can Pickup	\$6,000	\$4,500	\$4,000	\$14,500
Canal Patrol	\$14,500	\$10,500	\$9,000	\$34,000
Weed Control	\$2,500	\$2,500	\$2,500	\$7,500
Other Misc. Maintenance				
Provide an Additional Pilot Vehicle to assist FID Canal Maintenance Operations	\$4,500	\$4,500	\$4,500	\$13,500
Provide Public Notification during Canal Maintenance Activities	\$500	\$500	\$500	\$1,500
Signage	\$500	\$500	\$500	\$1,500
TOTAL	\$50,000	\$37,000	\$30,500	\$117,500

Other Potential Maintenance Obligations:

- Homeless Abatement: TBD
- Periodic Dredging: TBD
- Other Misc. Maintenance:
 - Special Equipment (Benches, Drinking Fountains, Entry Features, Maintenance Equip., etc.): TBD
 - Canal Bank Erosion: TBD
- Dry Creek Trail Cleanup and Tree Trimming: TBD

Estimated MTA Maintenance Obligations (Annual Costs) continued

Maintenance and Cost Items	Cost Assumptions
Tree Trimming	This cost includes the trimming of trees adjacent to and on the trail: - Enterprise Canal: approx. 250 trees - Gould Canal: approx. 125 trees - Big Dry Creek: Costs TBD
Litter Cleanup	Litter cleanup along the trails for the following: - Enterprise Canal: 9.8 miles - Gould Canal: 6.5 miles - Big Dry Creek: 5.2 miles
Toter/Can Pickup	Trash pickup at the following number of locations: - Enterprise Canal: 16 locations - Gould Canal: 12 locations - Big Dry Creek: 11 locations
Canal Patrol	Canal patrols for the following trail lengths: - Enterprise Canal: 9.8 miles - Gould Canal: 6.5 miles - Big Dry Creek: 5.2 miles
Weed Control	Weed control only required along segments of trails subject to a Common Use Agreement. - Enterprise Canal - Gould Canal - Big Dry Creek
Other Misc. Maintenance	
Provide an Additional Pilot Vehicle to assist FID Canal Maintenance Operations	
Provide Public Notification during Canal Maintenance Activities	Notifications per trail.
Signage	Trail signage to be installed and maintained as required for the following: - Enterprise Canal - Gould Canal - Big Dry Creek

Other Potential Maintenance Obligations:

- Homeless Abatement: Homeless abatement will be handled by Clovis PD.
- Periodic Dredging: This will be project specific depending on the need and severity of the conditions.
- Other Misc. Maintenance:
 - Special Equipment (Benches, Drinking Fountains, Entry Features, Maintenance Equip., etc.): This will be project specific depending on the local conditions and magnitude of the unique project.
 - Canal Bank Erosion: This will be project specific depending on the need and severity of the conditions.
- Dry Creek Trail Cleanup and Tree Trimming: Negotiated with FID.

Trails of Clovis

Updated September 12, 2016

Legend

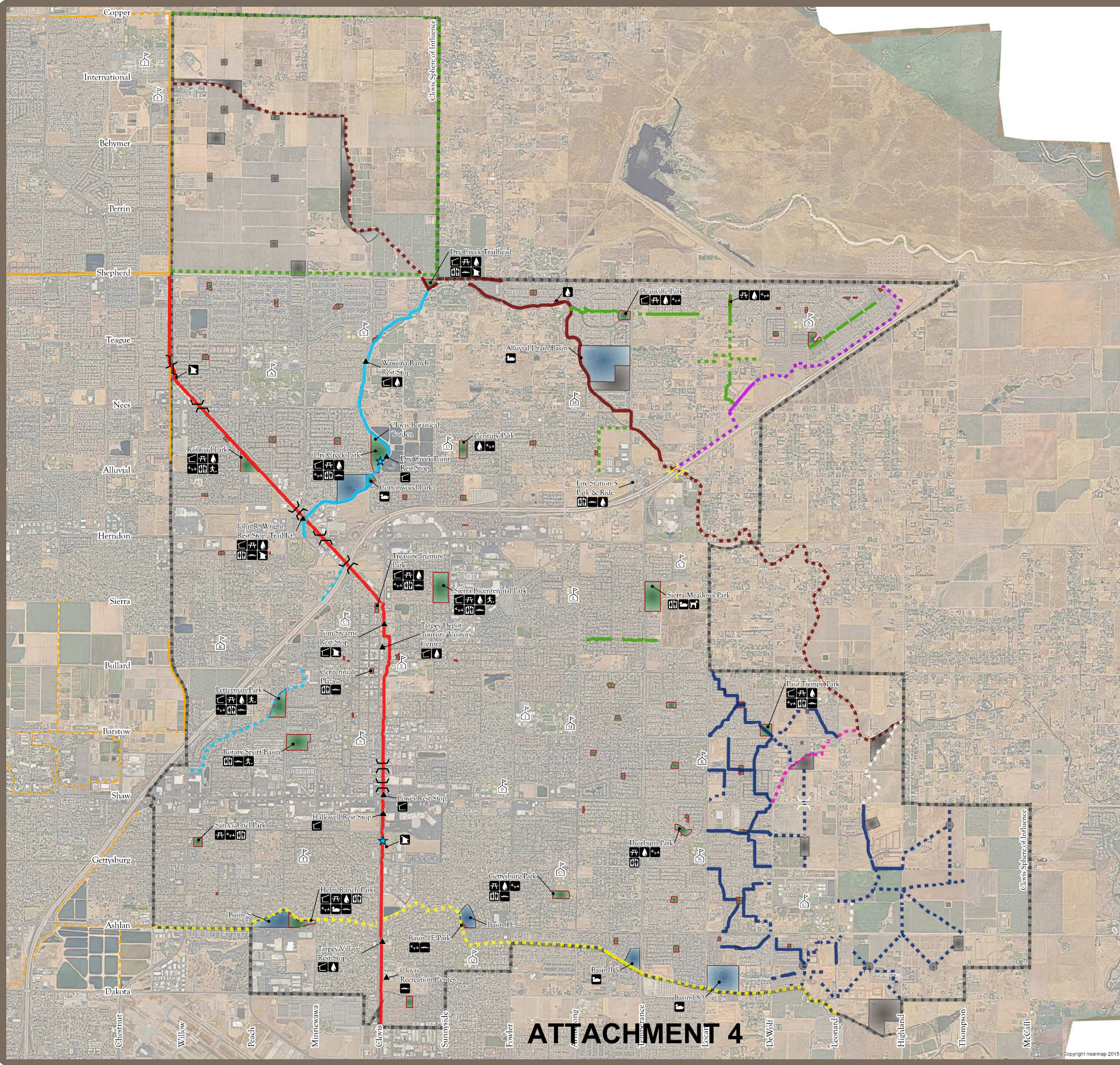
Solid line indicates existing trail
Dashed line indicates future trail

- Clovis Old Town Trail
- Dry Creek Trail
- Enterprise Canal Trail
- Dog Creek Trail
- Gould Canal Trail
- Jefferson Canal Trail
- Loma Vista Paseo
- Miscellaneous Trail/Path
- Sierra Gateway Trail
- Trail in Adjacent Jurisdiction
- Parks
- Future Parks
- Rest Stops
- Water Basins
- Tunnel
- Future Tunnel
- Future Bridge
- Trail Parcourse Equipment

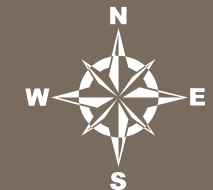
- Shelter
- Picnic
- Parking
- Restrooms
- Map Display Board
- Play Equipment
- Drinking Fountain
- Sports Field
- Animal Adoption Center
- Wildlife Viewing

Schools

- Buchanan Educational Center
- Bud Rank Elementary
- Cedarwood Elementary
- Century Elementary
- Clark Intermediate
- Clovis Community College Center
- Clovis East Educational Center
- Clovis Elementary
- Clovis High
- Clovis North Educational Center
- Cole Elementary
- Cox Elementary
- Dry Creek Elementary
- Freedom Elementary
- Gettysburg Elementary
- Jefferson Elementary
- Miramonte Elementary
- Red Bank Elementary
- Sierra Vista Elementary
- Tarpey Elementary
- Weldon Elementary
- Woods Elementary



ATTACHMENT 4





CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council
 FROM: Public Utilities Department
 DATE: February 14, 2022
 SUBJECT: Consider Approval – Consider an Assessment Increase Election in Landscape Maintenance District No. 1.

Staff: Glenn Eastes, Assistant Public Utilities Director

Recommendation: Approve

ATTACHMENTS: 1. Election Diagram Map – Benefit Zone 1
 2. Election Diagram Map – Benefit Zone 5
 3. Proposal – Francisco & Associates, Inc.
 4. Consultant Service Agreement with Francisco & Associates, Inc.

CONFLICT OF INTEREST

None.

RECOMMENDATION

1. For the City Council to authorize City staff to proceed with the Landscape Maintenance District assessment increase election; and
2. For the City Council to authorize the City Manager to enter into an agreement with Francisco & Associates, Inc. to administer the Landscape Maintenance District assessment increase election.

EXECUTIVE SUMMARY

Clovis Landscape Maintenance District (LMD) No. 1 is comprised of 47 Benefit Zones that consist of parks, street-side landscaping, neighborhood monuments, lighting, and neighborhood roundabouts that benefit the properties within each of the zones. The properties in each zone are assessed to provide funding for landscape maintenance and the repair and replacement of monuments, lights, irrigation systems, and park amenities. Annually, City staff analyzes the revenues, expenses, and reserves of each Landscape Benefit Zone to determine assessment rates.

Staff is proposing an election in Benefit Zones 1 and 5 at this time.

Benefit Zone 1 includes the street-side and street median landscaping generally between Herndon Avenue and Shepherd Avenue. A map showing the properties assessed in Zone 1 is included as Attachment 1.

The rates in Zone 1 have not increased since the previous election in 2004. Over the past few years, expenditures have exceeded revenue in Zone 1.

It is recommended to increase the existing annual rate by \$21, from \$78.50 to \$99.50.

Benefit Zone 5 includes parks located generally south of Herndon Avenue between Sunnyside Avenue and Locan Avenue. A map showing the properties assessed in Zone 5 is included as Attachment 2.

The rates in Zone 5 have not increased since the previous election in 2013. Over the past several years, expenditures have exceeded revenue in Zone 5. In 2016, a rate increase election was conducted but failed by a narrow margin. As a result, services were reduced to keep the fund balance from going negative. The playground structures are an average of 16 years old, with one being over 28 years old.

It is recommended to increase the existing annual rate by \$22.20, from \$50.10 to \$72.30. This would allow sufficient funds to restore maintenance levels and replace the oldest playground structures.

LMD Engineering Consultant Recommendation

Francisco & Associates, Inc. is an engineering firm that specializes in the administration of LMDs. Joe Francisco has served as the LMD Engineer for the City of Clovis since 1995 and has contracted with the City of Clovis previously on LMD elections. Staff is recommending contracting with Francisco & Associates, Inc. for services associated with the election.

BACKGROUND

There are currently 47 Benefit Zones within Landscape Maintenance District (LMD) No.1. These Benefit Zones were established to provide funding for specific landscape and lighting benefits throughout the City. The properties that receive a specific benefit from those improvements are assessed in proportion to the benefit they receive. The first six zones cover the City's LMD street and LMD park landscaping. Benefit Zones 1, 2, and 3 fund the City's LMD street-side and street median landscaping. Benefit Zones 4, 5, and 6 fund the City's LMD parks. Benefit Zones 7 through 45 are neighborhood-specific and include decorative neighborhood entries and/or decorative street lighting. Benefit Zone 11 is no longer used and Benefit Zones Southeast (SE) and Northwest (NW) are unique in that the one zone funds all street landscaping, parks, and decorative features. Benefit Zone SE is Loma Vista and is generally located south of Bullard Avenue and east of Locan Avenue. Benefit Zone NW is Heritage Grove and is located north of Shepherd Avenue.

The assessments for LMD Benefit Zones 1 through 6 do not have an annual escalation factor because not all of the properties within these zones include an escalation authority in their property covenants. The assessments for LMD Benefit Zones 7 through NW include an annual

escalation factor equal to the Consumer Price Index Increase (CPII) plus 2%. If assessments need to increase in Zones 1 through 6, or if they need to increase more than CPII plus 2% in the other zones, it is necessary to hold an election of the affected property owners. The balloting is conducted per Proposition 218. Election results are determined by a simple majority of returned ballots. Benefit zones are tabulated separately, and each benefit zone stands on its own.

In 2016, City staff consulted with Strategy Research Institute to conduct property owner surveys prior to the assessment elections. This allowed for an understanding of potential assessment rate thresholds. Since a survey was conducted in FY15-16, staff is not recommending a survey for this election.

The City held an election to increase assessments in Benefit Zone 5 in 2016, which failed by 50.12% of ballots. Reductions to service were implemented in Benefit Zone 5 and those measures have postponed the need for an assessment rate increase election. However, the zone is in a deficit condition and cannot be maintained appropriately without an increase to the rates. In addition, aging park structures need to be replaced.

The last increase to Benefit Zone 1 was approved in 2004. Over the last few years, revenues have not been keeping pace with expenditures and the funding is facing deficit conditions. The Bureau of Labor Statistics consumer price index suggests prices are 51% higher in 2022 compared to prices in 2004. That would equate the 2004 rates of \$78.50 to \$118.75 today in Benefit Zone 1. The proposed rate increase of \$99.50 is lower than that value.

Election Recommendations

Based on staff review and financial conditions of Benefit Zones 1 and 5, staff recommends proceeding with an election to increase the assessments. Staff is not recommending an annual cost escalation factor be included with the election. Since an annual escalation factor will not be included, it will be necessary to increase rates in the future by elections. Staff has estimated that another election will not be needed for at least 5 years. In order to complete the election in time to increase assessments in the upcoming fiscal year, staff intends to prepare and mail the ballots March 30th, hold a public hearing and close balloting at the Council meeting on May 16th, tabulate the ballots May 17th, and continue the public hearing to confirm the election and assessments at the Council meeting on June 6th.

Contract with Francisco and Associates, Inc. to Administer the Election

Joseph Francisco, the principal of Francisco & Associates, Inc., has administered the LMD for the City since 1995. Mr. Francisco has consistently provided excellent service to the City and administered the LMD elections in 2004, 2013, 2016, and 2018 in a competent and efficient manner.

Francisco & Associates, Inc. has submitted a proposal (Included as Attachment 3) for services associated with the administration of the recommended LMD election, including assisting the City with preparing and mailing the notices and ballots and the subsequent tabulation of the ballots. Staff has reviewed the proposal and has found the costs for the services to be reasonable. Francisco & Associates, Inc. specializes in the administration of LMDs, has expertise in the legislative and judicial issues associated with LMDs, and is very familiar with the

LMD for the City of Clovis. For these reasons, staff recommends that Council authorize the City Manager to enter into an agreement with Francisco & Associates, Inc. for these services.

FISCAL IMPACT

There is no impact to the General Fund. Preparation of the notices and ballots and tabulation of the ballots will cost approximately \$36,300.00 (\$2.42/ballot). Postage for mailing out the notices and ballots and postage for returning of the ballots will cost approximately \$17,500.00. Sufficient funds are available in the LMD reserve to pay these costs. If the election is successful, revenues will be adequate to maintain the current level of services for at least another 5 years. If the election is not held or is unsuccessful, revenues in Benefit Zones 1 and 5 will not be adequate to support the current level of service and staff must begin to reduce service to meet the available revenue.

REASON FOR RECOMMENDATION

There has not been a rate increase in Benefit Zone 1 since 2004. Expenditures have continued to rise due to typical inflation outpacing the fixed revenue rate. Expenditures have exceeded revenues over the past few years and reserve balance is below 2% of annual expenditures.

Benefit Zone 5 has been on reduced service since 2016 and has aging play structures. A rate increase is needed to restore maintenance levels and to fund the replacement of the aging assets.

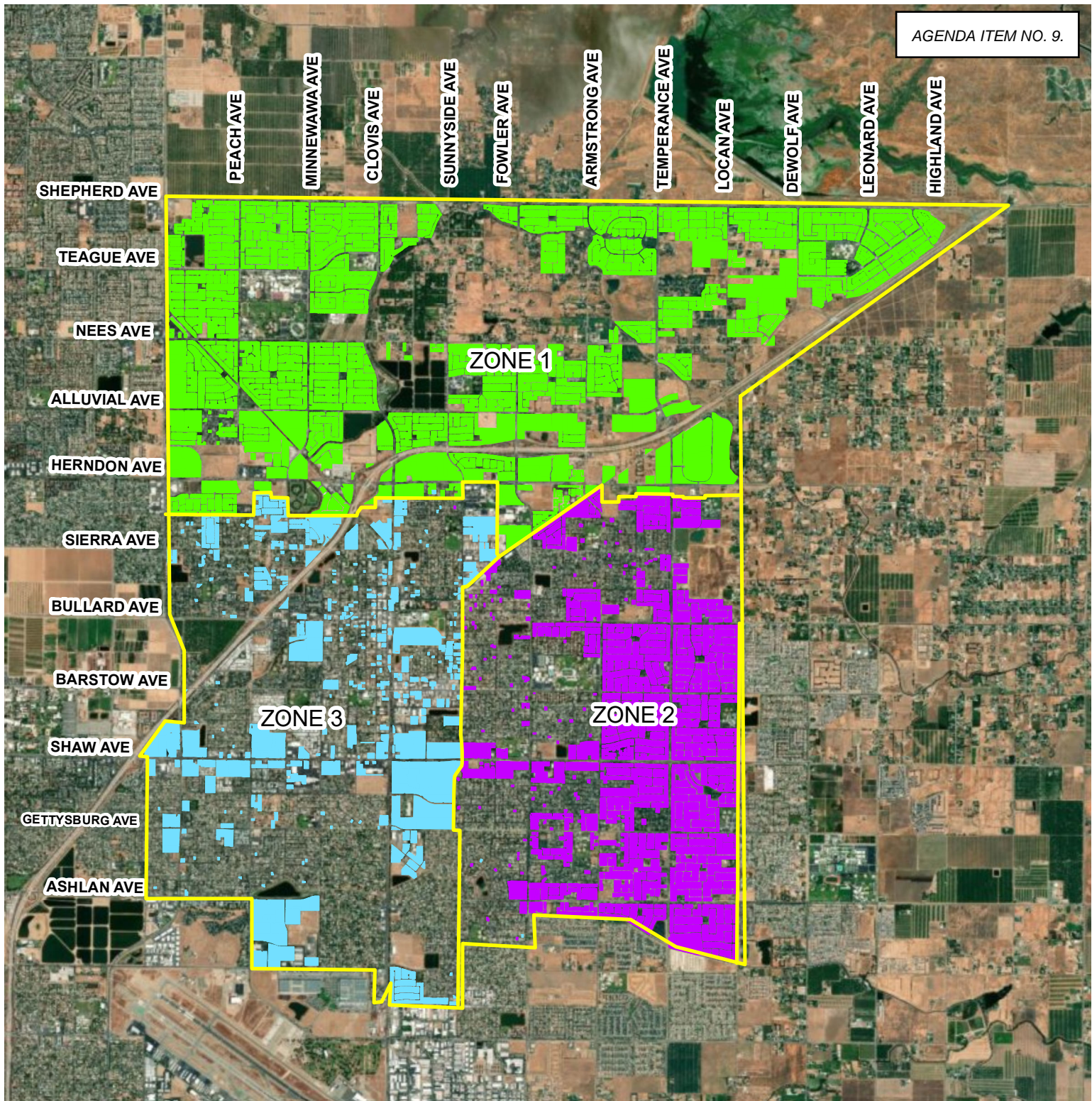
Francisco & Associates, Inc. is the most qualified to provide the services associated with the election and they have submitted a proposal for those services. Staff has reviewed the proposal and found the costs to be reasonable.

ACTIONS FOLLOWING APPROVAL

1. The City Manager will execute a contract with Francisco & Associates, Inc.
2. March 21, 2022 – Resolution of Intention and Approval of Preliminary Engineer's Report
3. March 29, 2022 – Mail Notices/Ballots
4. May 16, 2022 – LMD Public Hearing & Close of LMD Election
5. June 6, 2022 – LMD Public Hearing Continued, Election Results, and Resolution to Levy

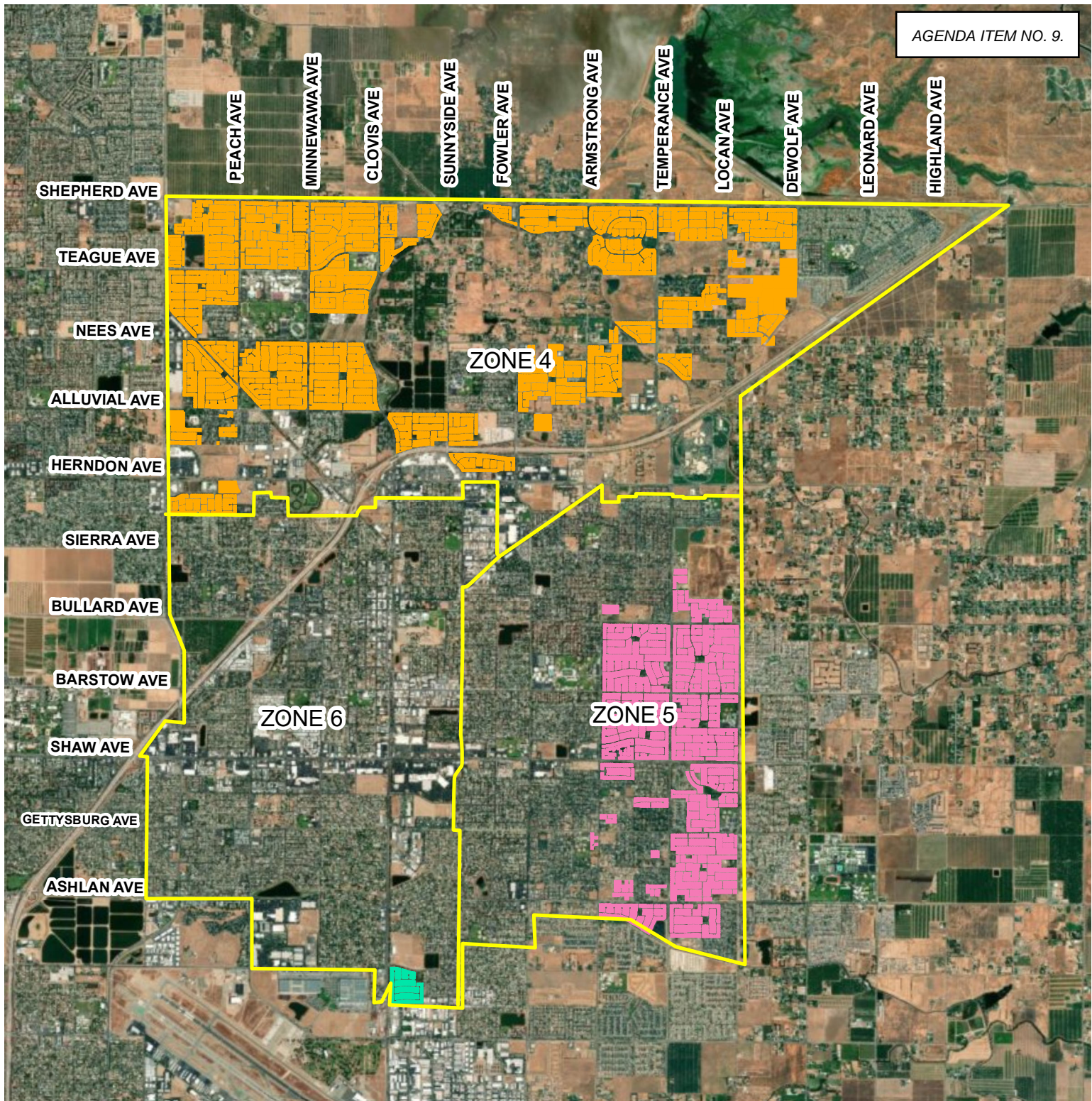
Prepared by: Glenn Eastes, Assistant Public Utilities Director

Reviewed by: City Manager *JH*



LMD ZONES 1-3
 GENERAL LANDSCAPING
 2019/2020 ASSESSMENT CHANGES
 NO ASSESSMENT CHANGES ZONES 1-3





LMD ZONES 4-6 PARKS

2019/2020 ASSESSMENT CHANGES NO ASSESSMENT CHANGES ZONES 4-6

ATTACHMENT 2



1 inch = 5,16



January 31, 2022

Scott Redelfs, P. E.
Public Utilities Director
Public Utilities Department
City of Clovis
155 N. Sunnyside
Clovis, CA 93611

Subject: Proposal to Assist the City of Clovis to Conduct the Proposition 218 Notice and Ballot Mailing and Subsequent Ballot Tabulation for Benefit Zones No. 1 and No. 5 in the City's Landscape Maintenance District No. 1

Dear Scott:

Francisco & Associates, Inc. appreciates the opportunity to submit this proposal to the City of Clovis to conduct the Proposition 218 notice and ballot mailing and subsequent ballot tabulation for Benefit Zones No. 1 and No. 5 in the City's Landscape Maintenance District No. 1.

SCOPE OF SERVICES

The scope of work will consist of updating the notice and balloting database to include the most current parcel information (e.g. property owner names, mailing addresses, etc.), duplication of approximately 15,000 notices, ballots and outgoing and return envelopes, mailing of the notices and ballots, preparation of replacement notices and ballots if requested by property owners and subsequent tabulation of ballots for Benefit Zones No. 1 and No. 5.

Task 1 – Develop updated Notice and Ballot Database

Coordinate with the County to obtain the most current property owner database and update the property owner names and mailing address information for the parcels located within Benefit Zones No. 1 and No. 5.

Task 2 –Mail Merge and Duplicate Approximately 15,000 Notices, Ballots, Outgoing Envelopes and Return Envelopes

Coordinate with City staff and the mail house to mail merge and duplicate approximately 15,000 notices, ballots, outgoing and incoming envelopes. The outgoing envelopes will be white No. 10 windowed envelopes with the City's logo, return address, stamp and statement that the envelopes contain an assessment ballot inside. The No. 9 return envelopes will be a light pastel color and contain the City's logo and return address on them along with prepaid

231 Market Place, Suite 543 ~ San Ramon, CA 94583
(925) 867-3400 ~ fax (925) 867-3415

return postage. The notice will be 11" x 17" and contain the information associated with the proposed assessment increase and the ballot will be colored card stock.

Task 3 – Mailing of Notices and Ballots

Fold, stuff, apply postage to outgoing and incoming envelopes and deliver approximately 15,000 notices and ballots to the post office to ensure they are delivered by the legal deadline. The ballots will be mailed no less than 45 days prior to the public hearing.

Task 4 – Duplicate Notices and Ballots

If requested by the City or property owner, Francisco & Associates will prepare and mail duplicate notices and ballots in the event they are lost, misplaced, if the property owner wishes to change their vote, etc. These ballots will be printed on a different colored card stock than the original ballots to ensure ballots are not counted twice.

Task 5 – Tabulation of Ballots

After the close of the Public Hearing, open, sort, and tabulate all returned ballots and prepare the ballot tabulation reports for each Benefit Zone. The tabulation reports shall include, but not limited to; the number of returned ballot votes in favor of the assessment increase, number of ballot votes opposed to the assessment increase, number ballot votes considered invalid, and number of ballots not returned.

Responsibilities of the City

- 1) Provide qualified legal counsel to review and approve the Proposition 218 documents and proceedings;
- 2) Determine the assessment increases for Benefit Zones No. 1 and 5;
- 3) Prepare and publish all legal notices;
- 4) Prepare all staff reports and resolutions; and
- 5) Schedule and agendize required City Council meetings.

FEE SCHEDULE

The following is a listing of our lump sum fee schedule.

Preparation, Mailing of Notices/Ballots and Tabulation (15,000 parcels) \$2.42/parcel

All mail house costs associated duplication, folding, stuffing, etc. the notices and ballots are included in the lump sum fee per parcel shown above. Based upon conducting a Proposition 218 election for 15,000 parcels within Benefit Zones No. 1 and No. 5 the estimated fee would be \$36,300.00.

Francisco & Associates, Inc.


City to pay outgoing and incoming postage prior to mailing which is estimated to be \$17,400.00 (\$0.58 outgoing and \$0.58 incoming postage).

TERMS

Francisco & Associates will invoice the City on a monthly basis for services performed during the previous month. The City will pay undisputed invoices within 30 days of receipt of invoice.

If you have any questions or comments regarding our proposal, please call me at 925-867-3400.

Sincerely
FRANCISCO & ASSOCIATES, INC.



Joseph A. Francisco, P.E.
Principal

**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 the individual or entity identified below ("Consultant") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on the date signed by City, which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. City desires to obtain services for the preparation of a study/report and associated services ("Services") described in **Exhibit A**, and as further set forth in the proposal from Consultant attached as **Exhibit B** ("Proposal") and incorporated herein by reference. If there is a conflict between the terms of the Proposal and this Agreement, this Agreement shall control.
- B. Consultant is engaged in the business of furnishing the Services and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing 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.
2. **Commencement of Services; Term of Agreement.** Consultant shall commence the Services upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed and completed the Services, or until such time as the Agreement is terminated by either party pursuant to Section 16 herein, whichever is earlier.
3. **Payment for Services.** City shall pay Consultant a sum not to exceed the total set forth in **Exhibit A** for the Services 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.
4. **Independent Contractor Status.** Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of City. 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.
5. **Standard of Care.** Consultant expressly represents it is qualified in the field for which Services are being provided under this Agreement and that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, 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 and regulations.

6. 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.

7. 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.

8. Power to Act on Behalf of City. Consultant 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.

9. 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 and five (5) copies of all final reports prepared by Consultant under this Agreement.

10. Ownership and Inspection of Documents. All data, tests, reports, documents, 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 ("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 the City Manager. 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.

11. Confidentiality. All data, reports, conclusions, opinions, recommendations and other 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.

12. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the

City projects 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 or other similar medium without the prior written consent of City.

13. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, in the Services. 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.

14. 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.

15. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

16. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

a. Termination by City: Without Cause. This Agreement may be terminated by City at its discretion upon seven (7) days prior written notice to Consultant.

b. Termination by City or Consultant: For Cause. Either party may terminate this Agreement upon fourteen (14) days prior written notice to the other party of a material breach, and a failure to cure within that time period.

c. Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant, and provided all other conditions for payment have been met, 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 in Section 3 herein. 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 receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

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

18. 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, unless the injuries or damages are the result of City's sole negligence or willful misconduct.

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.

19. 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 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 license from City and pay the applicable annual business license fee to City during the term of this Agreement.

20. 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.

21. 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 a written acknowledgment of receipt by the other party. Service shall be deemed the date of written 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 seventy-two (72) hours after deposit.

22. Entire Agreement. This Agreement, including the 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

29. 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.

30. 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 or some other dispute resolution procedure, unless the parties mutually agree otherwise. 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.

31. 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.

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

CONSULTANT

CITY OF CLOVIS

Name:

By: _____
Joseph A. Francisco, Principal

By: _____
Scott Redelfs, Public Utilities Director

Date: _____

Date: _____

Party Identification and Contact Information:

Consultant:
Francisco & Associates, Inc.
5927 Balfour Ct Ste 109
Carlsbad, CA 92008
(760) 438-5330
joef@franciscoandassociates.com

City of Clovis:
Public Utilities Department
155 N. Sunnyside Avenue
Clovis, CA 93611
(559) 324-2600

ATTEST

_____, City Clerk

APPROVED AS TO FORM

_____, City Attorney

EXHIBIT A DESCRIPTION OF SERVICES

Description of the services and work product desired.

The scope of work will consist of updating the notice and balloting database to include the most current parcel information (e.g. property owner names, mailing addresses, etc.), duplication of approximately 15,000 notices, ballots and outgoing and return envelopes, mailing of the notices and ballots, preparation of replacement notices and ballots if requested by property owners and subsequent tabulation of ballots for Benefit Zones No. 1 and No. 5.

Total compensation to be paid to Consultant. Terms of payment.

Time and Materials per Exhibit B Not to Exceed \$36,300.00.

EXHIBIT B CONSULTANT PROPOSAL

See attached.

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to commencement of the Services, Consultant shall take out and maintain, at its own expense, and shall cause any subcontractor with whom Consultant contracts for the performance of Services pursuant to this Agreement to take out and maintain, the following insurance until completion of the Services or termination of this Agreement, whichever is earlier, except as otherwise required by subsection (d) below. 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 limits no less than:
- (i) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$2,000,000.00 per occurrence or claim, \$2,000,000 aggregate. Said insurance shall be maintained at all times during Consultant's performance of Services under this Agreement, and for a period of five years following 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 \$1,000,000 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) Business 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) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(v) 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.

(vi) 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.

Consultant shall maintain all of the foregoing insurance coverages during the term of this Agreement, except as to (a) the products and completed operations coverage under the General Liability Insurance which shall also be maintained for a period of ten (10) years following completion of the Services by Consultant or termination of this Agreement, whichever is earlier; and (b) Professional Liability Insurance, which shall be maintained for a period of five (5) years following completion of the Services by Consultant or termination of this Agreement, whichever is earlier.

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.