



# CITY of CLOVIS

## AGENDA • CITY COUNCIL MEETING

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

October 12, 2020

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.

### **\*SPECIAL NOTICE REGARDING PUBLIC PARTICIPATION DUE TO COVID-19\***

Given the current Shelter-in-Place Order covering the State of California and the Social Distance Guidelines issued by Federal, State, and Local Authorities, the City is implementing the following changes to participate in Council meetings until notified otherwise. The Council chambers will be open to the public but we will be implementing social distancing policies and will limit the number of people who may be in the Council chambers. Face masks are required to attend. We are encouraging residents to participate virtually following the directions below. If you are sick, please do not attend the meeting. Any member of the City Council may participate from a remote location by teleconference.

- The meeting will be webcast and accessed at: <https://cityofclovis.com/government/city-council/city-council-agendas/>

### **Written Comments**

- Members of the public are encouraged to submit written comments at: <https://cityofclovis.com/government/city-council/city-council-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.
- You will be able to speak to the Council for up to three (3) minutes.

### **Webex Participation**

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

### **CALL TO ORDER**

### **FLAG SALUTE - Councilmember Ashbeck**

### **ROLL CALL**

**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 – Res 20 -\_\_\_ Authorizing submission of an application to the California State Department of Housing and Community Development for funding under the CalHome Program; and Authorizing the City Manager to execute the Standard Agreement if selected for such funding and any Amendments thereto; and any related documents necessary to participate in the CalHome Program.
2. Administration – Approval – Updated Program Guidelines for Clovis' Home Rehabilitation Grant Program.
3. Planning and Development Services - Approval – Final Acceptance for Final Map for Tract 6145, located at the southwest corner of DeWolf and Richmond Avenues (Wilson Premier Homes, Inc.).

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

4. Consider - A Request to Initiate an Ordinance Amendment to Amend Chapter 1.8 of Title 1 of the Clovis Municipal Code Regarding Campaign Contribution Limits due to new State Law (AB 571).

**Staff:** Karey Cha, Deputy City Clerk  
**Recommendation:** Consideration

5. Consider Approval - Final Acceptance for CIP 15-16, Willow Avenue Widening Project.

**Staff:** Mike Harrison, City Engineer  
**Recommendation:** Approve

6. Consider Approval - Res. 20-\_\_\_, A Resolution of Necessity to determine that the public interest and necessity require acquisition of portions of three properties for public purposes, and authorizing proceedings in eminent domain for said properties located on the north side of Shaw Avenue, east of De Wolf Avenue. Addresses: 3585 Shaw Avenue (previously 8196 E. Shaw Avenue), APN: 554-053-30; 3643 Shaw Avenue (previously 8248 E. Shaw Avenue), APN: 554-053-28; and 3693 Shaw Avenue (previously 8350 E. Shaw Avenue), APN: 554-053-25.

**Staff:** Ryan Burnett, Engineering Program Supervisor  
**Recommendation:** Approve

7. Consider Approval – Res. 20-\_\_\_\_, Adoption of a Resolution amending the 2019-2020 Annual Action Plan; and Amending the FY 2020-2021 Housing and Community Development Budget to Increase the Funds by \$602,534.

**Staff:** Heidi Crabtree, Housing Program Coordinator

**Recommendation:** Approve

8. Consider Introduction - Ord. 20-\_\_\_\_, OA2020-003, an Ordinance of the City Council of the City of Clovis amending Section 9.18.050 and adding Section 9.104.120 of the Clovis Municipal Code relating to the Regional Housing Needs Allocation (To be continued to the October 19, 2020 meeting)

**Staff:** Dave Merchen, City Planner

**Recommendation:** Approve

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

9. Consider Approval – Authorize the City Manager to Execute a Disposition and Development Agreement with Habitat for Humanity Greater Fresno Area for Construction of Affordable Housing at 1403 Fourth Street and 1421 Fourth Street in Clovis' Stanford Addition.

**Staff:** Heidi Crabtree, Housing Program Coordinator

**Recommendation:** Approve

## **COUNCIL ITEMS**

10. Consider Approval – Res. 20-\_\_\_\_, A Resolution in Support of Proposition 20 Reducing Crime and Keeping California Safe Act.

**Staff:** Luke Serpa, City Manager

**Recommendation:** Approve

11. Consider – Consideration of Design of City of Clovis Challenge Coin.

**Staff:** Mayor Bessinger

**Recommendation:** Consider

**WORKSHOP** - For the Clovis City Council to conduct a workshop to discuss the impact on ongoing City operations during the COVID-19 State of Emergency as declared by the Federal Government, State of California, County of Fresno, and City of Clovis; and to explore actions the City may take in response to the crisis.

## **CITY MANAGER COMMENTS**

## **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:

Oct. 19, 2020 (Mon.)

Nov. 2, 2020 (Mon.)

Nov. 9, 2020 (Mon.)

Nov. 16, 2020 (Mon.)

Dec. 7, 2020 (Mon.)

Dec. 14, 2020 (Mon.)

Dec. 21, 2020 (Mon.)



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: October 12, 2020

SUBJECT: Administration - Approval – Res 20 -\_\_\_ Authorizing submission of an application to the California State Department of Housing and Community Development for funding under the CalHome Program; and Authorizing the City Manager to execute the Standard Agreement if selected for such funding and any Amendments thereto; and any related documents necessary to participate in the CalHome Program.

ATTACHMENT: 1. Resolution

### **CONFLICT OF INTEREST**

None.

### **RECOMMENDATION**

For the City Council to authorize the submission of an application to the California State Department of Housing and Community Development (HCD) for funding under the CalHome Program; and authorizing the City Manager to execute the Standard Agreement if selected for such funding and any Amendments thereto; and any related documents necessary to participate in the CalHome Program.

### **EXECUTIVE SUMMARY**

On August 31, 2020, California HCD released a Notice of Funding Availability (NOFA) for the CalHome Program. Staff is seeking authorization to submit an application in the amount of \$5,000,000.

### **BACKGROUND**

The City of Clovis has long sought after grant funding to provide critical programs and improvements for the community. Staff received a NOFA from California HCD regarding the CalHome program and is seeking authorization to submit an application in the amount of \$5,000,000 to fund an owner-occupied rehabilitation loan program, a mobile home replacement loan program, and a mortgage assistance program.

**FISCAL IMPACT**

There would be no impact to the City's General Fund, and would provide funding for affordable housing projects and programs in the City of Clovis. If the application is funded by California HCD, a budget amendment in the amount of the grant award would be submitted for Council approval.

**REASON FOR RECOMMENDATION**

California HCD requires City Council approval before an application can be submitted under the CalHome program.

**ACTIONS FOLLOWING APPROVAL**

Staff will prepare and submit the CalHome grant application to California HCD.

Prepared by: Heidi Crabtree, Housing Program Coordinator

Reviewed by: City Manager *[Signature]*

**RESOLUTION 20-\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF CLOVIS AUTHORIZING SUBMISSION OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE CALHOME PROGRAM; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE STANDARD AGREEMENT IF SELECTED FOR SUCH FUNDING AND ANY AMENDMENTS THERETO; AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE CALHOME PROGRAM**

**WHEREAS**, the City Council of the City of Clovis wishes to apply for and receive an allocation of funds through the CalHome Program; and

**WHEREAS**, the California Department of Housing and Community Development (hereinafter referred to as "HCD") has issued a Notice of Funding Availability ("NOFA") on August 29, 2020, for the CalHome Program established by Chapter 84, Statutes of 2000 (SB 1656 Alarcon), and codified in Chapter 6 (commencing with Section 50650 of Part 2 of Division 31 of the Health and Safety Code (the "statute"). Pursuant to the statute, HCD is authorized to approve funding allocations utilizing monies made available by the State Legislature to the CalHome Program Regulations adopted by HCD in April 2004; and

**WHEREAS**, the City Council of the City of Clovis wishes to submit an application to obtain from HCD an allocation of CalHome funds in the amount of \$5,000,000.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Clovis shall submit to HCD an application to participate in the CalHome Program in response to the NOFA issued on August 29, 2020, which will request a funding allocation for the following activities:

Owner-Occupied Rehabilitation Assistance - \$4,500,000 to be used to provide rehabilitation loans to owner-occupied, low-income households in the City of Clovis; also to be used to provide loans to low-income households to replace severely-dilapidated mobile homes located in the City of Clovis.

Mortgage Assistance with Substantial Rehabilitation - \$500,000 to be used to provide financial assistance to low-income first-time homebuyers to acquire and rehabilitate a home located in the City of Clovis.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of Clovis hereby agrees to use the CalHome fund for eligible activities in a manner presented in the application as approved by HCD and in accordance with program regulations cited above. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement. The City Council of the City of Clovis acknowledges and agrees that it may be required to execute any and all other instruments necessary or required by HCD for participation in the CalHome Program. The City Council of the City of Clovis authorizes the City Manager to execute in the name of the City of Clovis the application, the Standard Agreement, and any subsequent amendments or modifications thereto, as well as



any other documents required by HCD for participation in the CalHome Program, and any amendments thereto.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on the 12th day of October, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: October 12, 2020

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Mayor

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City Clerk



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: October 12, 2020

SUBJECT: Administration – Approval – Updated Program Guidelines for Clovis' Home Rehabilitation Grant Program.

ATTACHMENT: 1. Home Repair Guidelines

### **CONFLICT OF INTEREST**

None.

### **RECOMMENDATION**

For the City Council to approve updated program guidelines for Clovis' Home Rehabilitation Grant Program.

### **EXECUTIVE SUMMARY**

Staff has updated the program guidelines to reflect changes in program requirements that will allow the City to deliver home repair assistance to its low-income residents in the most efficient and effective way.

### **BACKGROUND**

The Home Rehabilitation Grant Program is typically funded through the federal Community Development Block Grant (CDBG) Program. However, it is anticipated the program guidelines would apply to CDBG and any future funding sources for the program.

The purpose of the program is to provide financial assistance to owner-occupied, low-income households in Clovis (including mobile homes) to correct health and/or safety issues in the home. Currently the assistance is provided as a grant with a maximum assistance level of \$4,500. Applications for the program are accepted on a first-come, first-served basis.

The last update to Clovis' Home Rehabilitation Grant Program guidelines occurred in 2017. Since then it has become necessary to again update the program guidelines to reflect changes to the critical needs of Clovis' low-income residents. Most are minor updates to program implementation procedures. No updates change household eligibility criteria. The most significant update is the recommended increase of the maximum amount of assistance

to \$6,000 per household. This has become necessary as costs of construction and materials continue to rise.

**FISCAL IMPACT**

All funding for the program comes from federal grant funds, which are provided on a reimbursement basis. The expenditures have been included in the 2020-21 City of Clovis budget.

**REASON FOR RECOMMENDATION**

Significant changes to program guidelines and procedures require City Council approval.

**ACTIONS FOLLOWING APPROVAL**

Staff will begin operating the Home Rehabilitation Grant Program in accordance with the updated guidelines.

Prepared by: Heidi Crabtree, Housing Program Coordinator

Reviewed by: City Manager *JH*



**CITY OF CLOVIS**

**OWNER-OCCUPIED**  
**HOME REHABILITATION GRANT**  
**PROGRAM GUIDELINES**

**October 12, 2020**



**CITY OF CLOVIS**  
**OWNER-OCCUPIED HOME REHABILITATION GRANT**  
**PROGRAM GUIDELINES**

The City of Clovis (“City”) supports efforts to improve the City’s affordable housing stock. The Owner-Occupied Home Rehabilitation Grant Program (“Program”) described in these guidelines is designed to provide financial assistance to correct health and safety issues in the home by accessing grants of up to \$6,000 that are available from the Program. Applications for the City’s Owner-Occupied Home Rehabilitation Grant Program can be obtained by calling the City of Clovis at (559) 324-2094, or picked up at Clovis City Hall – Administration Department, 1033 Fifth Street, Clovis, CA.

The funding source used by the City for this program is the Community Development Block Grant (CDBG), funded by the U.S. Department of Housing and Urban Development (HUD).

**I. APPLICANT ELIGIBILITY**

**Conflict of Interest**

To the extent consistent with Federal and State conflict of interest laws as they apply to local government officials, employees and agents, the following rules shall apply regarding eligibility for this program. No member of the governing body of the City nor other official, employee, or agent of the City government who exercises policy or decision-making authority in connection with the planning and implementation of the Program shall directly or indirectly be eligible for this Program. This ineligibility shall continue for one year after an individual’s relationship with the City ends.

**Income**

To be eligible to participate in the City’s program, gross household income must not exceed eighty percent (80%) of the area median income (AMI) for Fresno County, which is adjusted for household size and reported in the most current income guidelines published by HUD. The applicant’s income combined with the income of all household members, related or non-related, aged 18 and older cannot exceed 80% of AMI. All persons in the residence are considered household members for the purpose of income eligibility.

**Fair Housing**

This policy will be implemented consistent with the City’s commitment to fair housing practices. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (children), physical or mental disability, sexual orientation, or any other arbitrary cause. Individuals who believe they have been discriminated against in a housing-related action may contact the City of Clovis Housing Program Coordinator at (559) 324-2094, or the Fair Housing Council of Central California at (559) 244-2950.

**Race and Ethnicity**

Applicants will be requested to identify race and ethnicity at the time of submitting an application. All applications will be processed in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach, and access to the Program. No person shall be excluded or denied benefits on the grounds of age, ancestry, color, creed, physical or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender or sexual orientation.

**Preferences**

The City will establish a waiting list for assistance and will provide assistance on a first-come, first-served basis. Preference will be given to households living in imminently unsafe conditions.

**Temporary Relocation**

Households approved for this program generally are not eligible for temporary relocation benefits in conjunction with the Home Rehabilitation Grant Program.

## II. PROPERTY ELIGIBILITY

### Location

To be eligible to participate in the City's Program, the property must be an owner-occupied residence located in the incorporated area of the City of Clovis.

### Property Condition

The goal of this Program is to correct health and safety issues within the City. Rehabilitation work must eliminate health and safety hazards to occupants and the public.

### Property Improvements

- *Eligible Improvements* – The goal of the City's Program is to correct health and safety issues in a home, provide improvements for persons with disabilities, and to preserve Clovis' affordable housing stock. Repairs are limited to items physically attached to the property and permanent in nature. Examples of eligible repair/replacement items include, but are not limited to:
  - Water Heaters
  - HVAC Systems
  - Roofs
  - Unsafe Flooring
  - Unsafe Porches/Steps
  - Architectural Barriers for Disabled and/or Handicapped Persons
  - Broken/Nonfunctioning Windows
  - Plumbing
  - Stoves/Ovens
  - Electrical

Approved repairs will be limited to no more than two major items, as funding permits.

- *Non-eligible Improvements* – Unnecessary physical improvements, repairs of a cosmetic nature, and repairs to structures not legally attached to the home (e.g. unattached garages, sheds, etc.)

## III. APPLICATION PROCEDURE

### Application Forms

Applicants may call the City and request an application packet to be mailed or schedule an appointment with a City representative to discuss in person the program and the application process. An application packet can also be picked up at the Clovis Planning and Development Services Department, 1033 Fifth Street, Clovis, CA. Only complete application packets will be accepted and evaluated for eligibility. A complete application packet consists of the following:

- Application; and
- Documentation to verify income from all sources for all household members aged 18 and older; and
- Proof of ownership of the home.

### Process

The following is a list of procedures followed when applying for a rehabilitation grant:

- *Application* – An application must be completed by the owner of the home. This includes listing all household members, and their income and asset information.

- *Preliminary Approval* – A City representative will evaluate the application and all supporting documentation to determine if the applicant meets preliminary requirements for the program. Preliminary eligibility will be based on income and ownership.
- *Preliminary Inspection* – A preliminary inspection will be scheduled with the homeowner, and will be conducted by City staff. Further program eligibility will be determined by demonstrated need at the time of inspection (existence of health and safety deficiencies within the home).
- *Project Review Committee* – The Project Review Committee is made up of City staff, and makes the final determination of the applicant’s general eligibility and eligibility of the needed repairs and improvements. The applicant will be notified in writing of the committee’s decision.
- *Environmental Review* – When a determination of eligibility is made, a City representative will prepare an Environmental Attachment A for the project to be maintained in the project file.
- *Work Write-Up* – When an applicant is notified of the Project Review Committee’s approval, a work write-up of the approved repairs will be provided to the homeowner.
- *Rehabilitation Construction Bids* – A list of contractors who have been determined by City staff to meet the requirements for completing work for the program will be provided to the homeowner. The homeowner will be asked to select a minimum of three contractors to whom bids will be solicited. The homeowner will be given an opportunity to add additional contractors to the list as long as the contractor meets the requirements of the program (e.g. state licensing, current business license, etc.). Based on approved repair items, City staff will send an invitation to bid to each of the homeowner’s selected contractors.
- *Bid Review* – Clovis staff will act as the clearinghouse for receiving and opening bids. City staff will review each for reasonableness, competitiveness, and completeness. Once the lowest and best bid has been determined, a Notice to Proceed will be mailed to the awarded contractor. A copy of the notice will be mailed to the homeowner.
- *Change Orders* – The City expects contractors submitting project bids to do a thorough inspection of the item(s) to be repaired prior to preparing the bid. Change orders will only be approved if they are necessary to completing the repairs, and could not be anticipated prior to construction. Payment will not be issued for change orders unless they have been approved in writing by the homeowner and a City representative prior to the additional work beginning.

#### **Pre-Construction Requirements**

Debris removal is a pre-construction requirement for a homeowner’s participation in the program. City staff must be able to access and inspect the parts of the home wherein repairs are needed, and contractors must be able to access those same areas in order to provide estimates and complete the repairs. The work area of the home must be in a clean and sanitary condition, free of debris, prior to project approval.

## **IV. FINANCING**

#### **Grant Limits**

Grants of up to \$6,000 are available for eligible program repairs. Grant amounts will be determined by actual need/cost of the repairs. The maximum grant to homeowners for repairs shall not exceed the amount required to fund costs associated with eligible improvements.

#### **Term of Financing**

*Grant* – The City’s assistance is provided as a grant.

#### **Loan Conditions**

*Ownership and Occupancy* – If the homeowner does not continue to occupy and own the subject property for a period of one year immediately following project completion, the grant funds provided must be repaid in full to the City of Clovis.

## **V. REHABILITATION CONTRACTORS**

## Requirements

The City can provide, upon request of the homeowner, a list of contractors who have completed repair projects through the program in the previous year. However, homeowners can contact any contractor of their choosing as long as they meet the following criteria:

- The contractor must hold a current and valid State of California General Contractor's license.
- The contractor cannot be on the State or Federal Debarred Contractors list.
- The contractor must have a City of Clovis business license.
- The contractor must have current and valid General Liability and Workmen's Compensation Insurance.
- The contractor must provide a one-year warranty for their work.

Estimates submitted by contractors who do not meet the criteria will not be considered.

## Construction Process

After the contractor has been selected, and a Notice to Proceed issued, the Contractor shall make arrangements with the homeowner to begin the repairs. The contractor will be responsible for making sure all required permits have been secured, depending on the type of work to be performed. The contractor will also be responsible for requesting required inspections work being performed, and for submitting proof of the permits/inspections prior to receiving payment. Contractor will have 30 calendar days from the date of the Notice to Proceed to complete the project.

## Contractor Payment

The City will pay the contractor directly. No funds will be distributed to the homeowner. Once the work has been completed, the contractor shall provide the City with all required Permits, Proof of Permit Inspection and Close-Out, and a Homeowner Satisfaction Statement signed by the homeowner. Once all required and completed documentation has been provided to the City, payment may be approved and processed. No partial payments will be permitted.

## Contractor/Homeowner Disputes

The agreement to complete work rests solely between the homeowner and the contractor, and therefore the City is not a party to the agreement. However, should a dispute arise, the City is willing to act as an intermediary to assist in an agreeable resolution. If it is deemed a contractor has not made a good faith effort to resolve the matter, or has been negligent, the contractor may be barred from participation in future City-funded projects. The homeowner may pursue legal action against the contractor through Small Claims Court and/or the State Contractors License Board.

## VI. PROGRAM COMPLAINT AND APPEAL PROCEDURE

Complaints by applicants, residents or property owners regarding the City's Program should be made to the City's Director of Community and Economic Development. The Director or a designee will investigate the complaint, prepare an analysis and recommendation and will schedule a discussion of the complaint with the Loan Review Committee. If the matter is not resolved to the satisfaction of the person filing the complaint, this person may submit a written appeal addressed to the City's Loan Review Committee. The Loan Review Committee will be convened within fifteen (15) days from the date the appeal is received unless a longer period of time is requested by the appellant. Within five (5) working days from the date the appeal is heard by Loan Review Committee, the City will mail a written response of the Committee's decision to the appellant. If the appellant is still not satisfied with the decision, they may appeal in writing to the Clovis City Manager following the same time line and procedures above. The decision of the City Manager will be final.

## VII. AMENDMENTS

Amendments to these guidelines may be made by the City whenever appropriate to improve Program effectiveness and to resolve problems. As part of the amendment adoption process, the City will review the policies of the funding source to ensure continuing compliance with published policies. Copies of amendments will be submitted to the U.S. Department of Housing and Urban Development CPD Representative for Clovis.





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: October 12, 2020

SUBJECT: Planning and Development Services - Approval – Final Acceptance for Final Map for Tract 6145, located at the southwest corner of DeWolf and Richmond Avenues (Wilson Premier Homes, Inc.).

ATTACHMENTS: 1. Vicinity Map

### **CONFLICT OF INTEREST**

None

### **RECOMMENDATION**

1. Accept the public improvements for Tract 6145 and authorize recording of the Notice of Completion; and
2. Authorize release of the Performance Surety immediately and release of the Labor and Materials Surety ninety (90) days after the recordation of the Notice of Completion, provided no liens have been filed; and release of Public Improvements Maintenance Surety upon the expiration of the one-year warranty period, and provided any defective work has been repaired to the City's satisfaction.

### **EXECUTIVE SUMMARY**

The owner, Wilson Premier Homes, Inc., has requested final acceptance of the public improvements constructed or installed in conjunction with this tract. The public improvements include all those shown on the subdivision improvement plans approved by the City Engineer. The construction or installation of the public improvements is complete. The owner has requested final acceptance. Staff is recommending approval of their request.

### **FISCAL IMPACT**

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

**REASON FOR RECOMMENDATION**

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

**ACTIONS FOLLOWING APPROVAL**

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

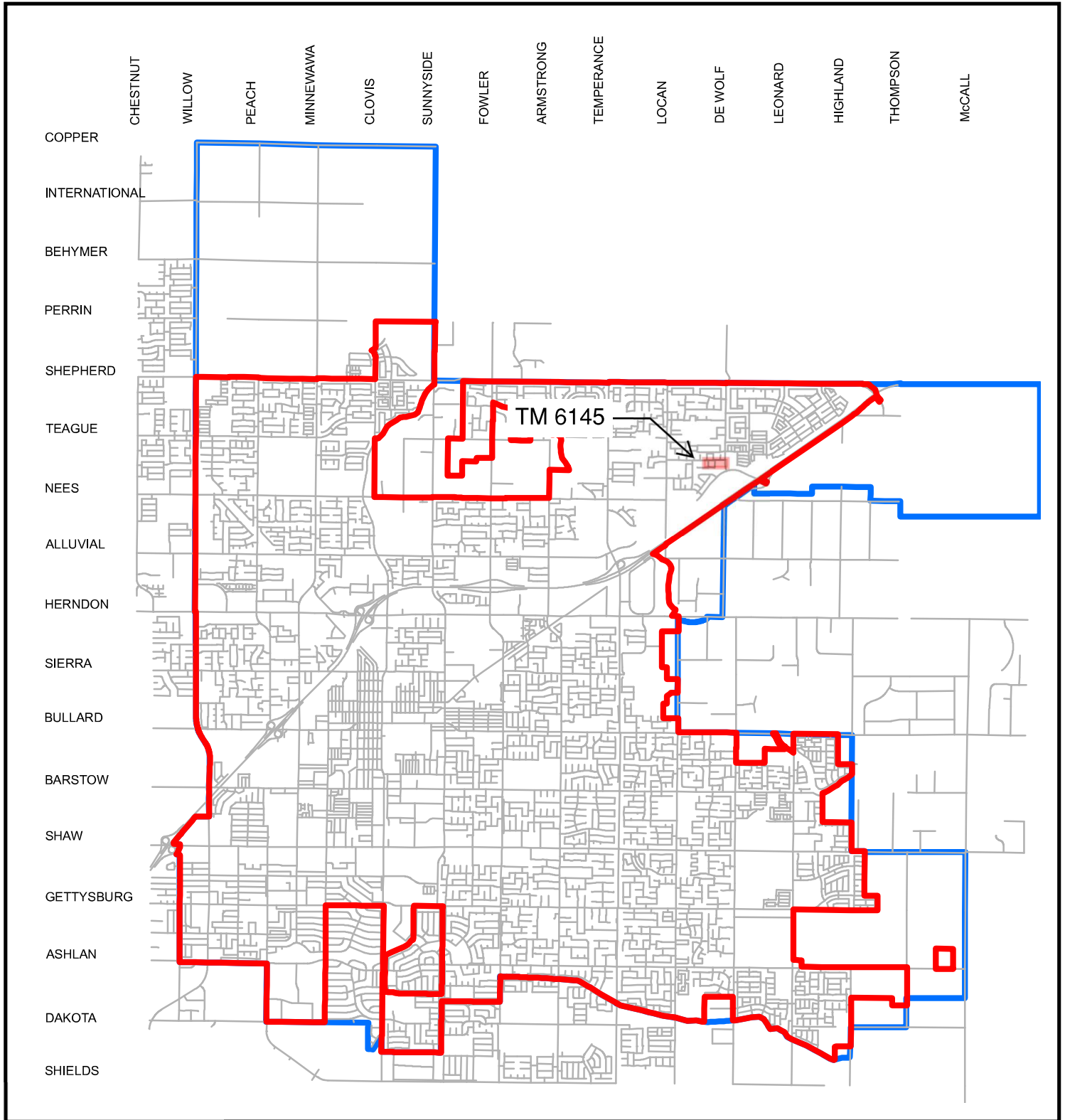
Prepared by: David Gonzalez, Civil Engineer

Reviewed by: City Manager *DH*

# VICINITY MAP

AGENDA ITEM NO. 3.

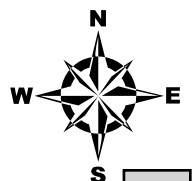
TM 6145



## ATTACHMENT 1



 City Limits       Sphere of Influence





# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: October 12, 2020

SUBJECT: Consider - A Request to Initiate an Ordinance Amendment to Amend Chapter 1.8 of Title 1 of the Clovis Municipal Code Regarding Campaign Contribution Limits due to new State Law (AB 571).

**Staff:** Karey Cha, Deputy City Clerk

**Recommendation:** Consideration

ATTACHMENTS: None

### CONFLICT OF INTEREST

None.

### RECOMMENDATION

For the City Council to review and consider potential amendments to Chapter 1.8 of Title 1 of the Clovis Municipal Code regarding campaign contribution limits due to the new Assembly Bill 571 and provide direction to staff.

### EXECUTIVE SUMMARY

On May 29, 2019, the State of California adopted Assembly Bill (AB) 571, which creates identical campaign contribution limits for candidates for county and city office as the limits imposed on certain elective state office candidates. AB 571 takes effect Jan. 1, 2021. As a result, effective January 1, 2021, the state campaign contribution limits will apply to local jurisdictions that have not established their own contribution limits. The current state limit for individual campaign contributions to a candidate is \$4,700, which will be adjusted on January 1 of each odd-numbered year. However, this bill continues to authorize a county or city to establish its own contribution limits, and to administer and enforce those limits. Such local limitation could be higher or lower than the current default limit.

The City does not currently have any campaign contribution limits with the exception of a voluntary expenditure limit set at \$1.00 per resident of the City of Clovis. Because of this, the candidates in the March 2021 and future General Municipal Elections will be subject to the state default contribution limits beginning on January 1, 2021, should the City not take any action to establish its own limits.

The City Council will have the option to accept the state's default contribution limits, formally set no limit to local campaign contributions, or set new local campaign contribution limits. In summary, absent a local ordinance or resolution, the City's campaign contribution limits will default to the current State Senate and Assembly limit of \$4,700, as adjusted every two years.

## **BACKGROUND**

On May 29, 2019, the State of California adopted Assembly Bill (AB) 571, establishing default campaign contribution limits for county and city office which becomes effective on January 1, 2021. This bill sets the local contribution limits at the same level as the limit on contributions to State Senate and Assembly candidates. This does not apply to candidates for special districts. However, this bill permits a county or city to establish its own contribution limits, which would prevail over the default limit set for state legislative campaigns.

Through AB 571, the Legislature found that most cities and counties in California have not imposed local campaign contribution limits for elected officials. Cities and counties with campaign contribution limit ordinances are required to file their ordinances with the Fair Political Practices Commission (FPPC). A list of California cities and counties that have enacted campaign contribution limits can be found on the FPPC website at the following link: <http://www.fppc.ca.gov/learn/campaign-rules/local-campaign-ordinances.html>.

Effective January 1, 2021, the state campaign contribution limits will apply to local jurisdictions that have not established contribution limits. The current state limit for an individual to contribute to a candidate in a calendar year is \$4,700. The limit is subject to be adjusted on January 1 of each odd-numbered year to reflect any increase or decrease in the Consumer Price Index, therefore the default limit will change come January 1, 2021.

Chapter 1.8 of Title 1 of the Clovis Municipal Code allows for a voluntary expenditure limit. The voluntary expenditure limit is established at \$1.00 per resident of the City of Clovis. All candidates and controlled committees of such candidates that seek an elective office in the City of Clovis must file either an acceptance or rejection of the voluntary expenditure limit in writing with the City Clerk. Because the City does not currently have campaign contribution limits for elected officials, the candidates in the March 2021 General Municipal Election will be subject to the default contribution limits if the City does not take any action.

Under AB 571, cities may adopt local campaign contribution limits that are different than the current default limit. Such local limitation could be higher or lower than the current default limit. FPPC staff has indicated that a city could also pass an ordinance or a resolution expressly declaring that there is no limit. Any such different local limitation adopted prior to January 1, 2021, would prevail over the default statutory limitation. If a city does not adopt its own limitation by January 1, 2021, the \$4,700 campaign contribution limit, as adjusted, will apply as of that date. Cities could later adopt different limitations after January 1, 2021, but in the absence of a local ordinance or resolution addressing campaign contribution limits, cities would default to the state limitations.

If a city adopts local campaign contribution limits, such limits would be enforced locally by the city and not by the FPPC. If no local limitation is adopted, the FPPC will enforce the state limits applicable to the city.

Staff is recommending Council consider a few options:

1. Accept the state default limits on campaign contributions. The default amount is currently \$4,700 per individual and will be adjusted every odd-numbered year.
2. Take formal action to set no limit on local campaign contributions with the exception of a voluntary expenditure limit. This option will be consistent with the City's current policy in place.
3. Take formal action to set a new limit on local campaign contributions.

#### **FISCAL IMPACT**

None.

#### **REASON FOR RECOMMENDATION**

New state legislation will affect future General Municipal Election candidates beginning January 1, 2021, if the City does not take any action.

#### **ACTIONS FOLLOWING APPROVAL**

With Council direction, staff will prepare an ordinance or resolution to set a limit or no limit on local campaign contributions. If Council should choose to accept the default limits set by the state, no further action is required.

Prepared by: Karey Cha, Deputy City Clerk

Reviewed by: City Manager *JA*



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Planning and Development Services Department  
 DATE: October 12, 2020  
 SUBJECT: Consider Approval - Final Acceptance for CIP 15-16, Willow Avenue Widening Project.

**Staff:** Mike Harrison, City Engineer  
**Recommendation:** Approve

ATTACHMENTS: 1. Vicinity Map  
 2. Acknowledgments for CIP 15-16

### CONFLICT OF INTEREST

None

### RECOMMENDATION

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

### EXECUTIVE SUMMARY

The project involved the widening of northbound Willow Avenue from 1 lane to 3 lanes plus a bike lane from Shepherd Avenue to 700 feet south of Copper Avenue. Other improvements included sewer and water utilities, installation of street lights, signal improvements and storm drain infrastructure. The project was funded by Regional Measure C.

### BACKGROUND

Bids were received on May 7, 2019 and City Council authorized the City Manager to award the project to the low bidder, Yarbs Paving and Grading, on May 20, 2019. The project was completed in accordance with the construction documents.

**FISCAL IMPACT**

1.	Award	\$ 8,463,948.00
2.	Cost increases/decreases resulting from differences between estimated quantities used for award and actual quantities installed.	\$ 114,464.58
3.	Contract Change Orders	
	Street Improvement Related Change Orders	\$257,596.49
	Dry Utility Related Change Orders	\$132,527.83
	Sewer Utility Related Change Orders	\$31,971.50
	Water Utility Related Change Orders	\$84,428.30
	Storm Drain Utility Related Change Orders	\$4,435.00
	Total Contract Change Orders	\$ <u>510,959.12</u>
	<b>Final Contract Cost</b>	<b>\$ 9,089,371.70</b>

This project was approved in the Community Investment Program 2018-2019 fiscal year budget and is funded by Regional Measure C Funds.

**REASON FOR RECOMMENDATION**

The Public Utilities Department, the City Engineer, the engineering inspector, the project Engineer, the County of Fresno and the City of Fresno agree that the work performed by the contractor is in accordance with the project plans and specifications, and has been deemed acceptable. The contractor, Yarbs Paving and Grading, has requested final acceptance from City Council.

**ACTIONS FOLLOWING APPROVAL**

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

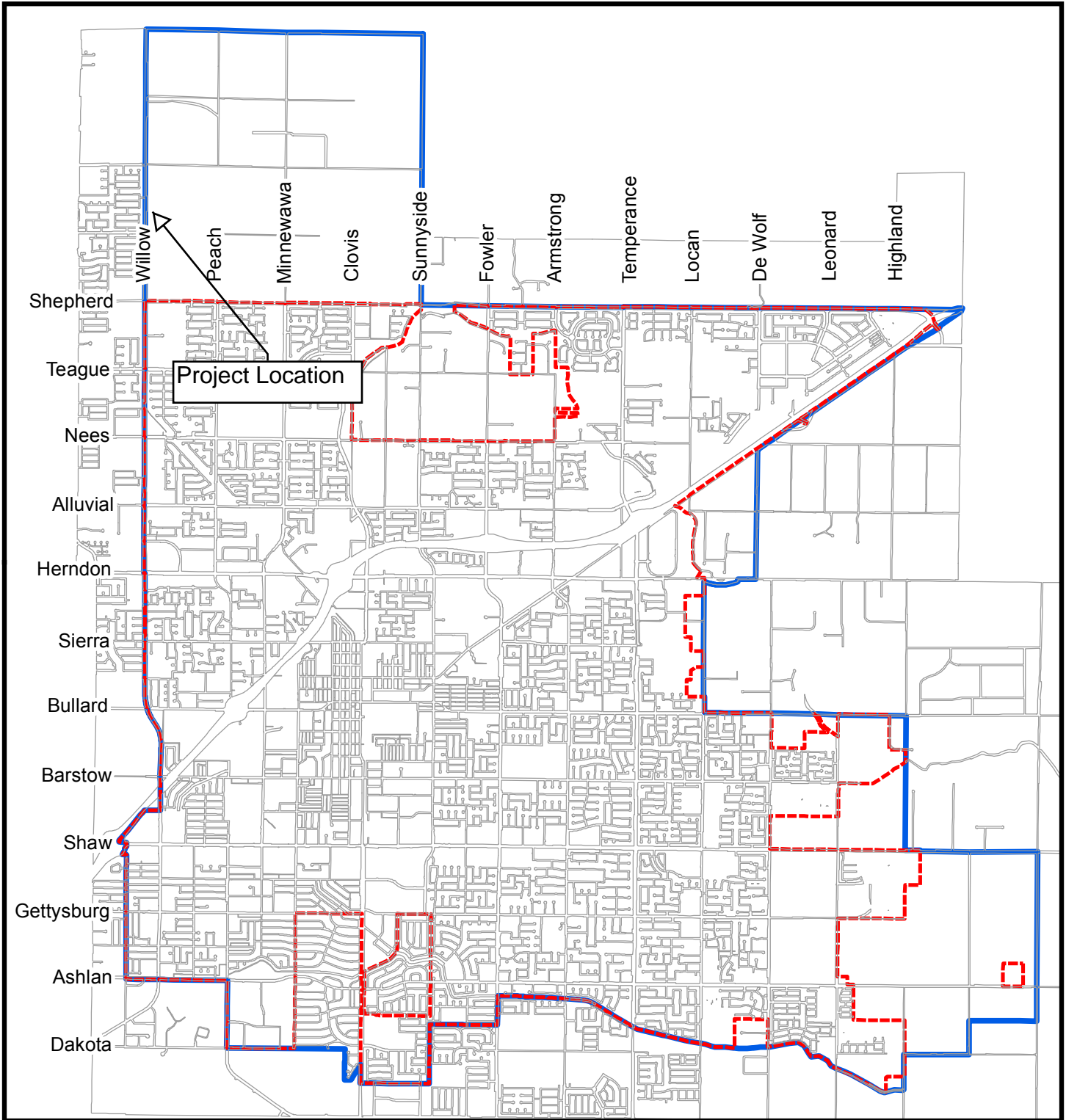
Prepared by: Kevin Gross, Civil Engineer

Reviewed by: City Manager *[Signature]*

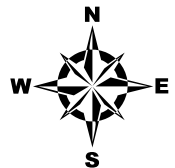


# VICINITY MAP

## CIP 15-16 Willow Avenue Widening



# ATTACHMENT 1



CITY LIMITS
  SPHERE OF INFLUENCE

**ACKNOWLEDGMENTS FOR CIP 15-16  
WILLOW AVENUE WIDENING PROJECT**

The Willow Widening Project was a Regional Measure C project where the City of Clovis was designated the lead agency. At \$9 million, the Willow Avenue widening project is the largest capital project delivered entirely using in-house staff for the design and construction management. The Clovis staff involved demonstrated a high level of expertise, competence, and cooperativeness on a project that involved several agencies and stake holders.

**City of Clovis Staff**

Kevin Gross	Travis Saether	Thad Avery	Mike Harrison	Rob Rush
Ryan Burnett	Claudia Cazares	Renee Mathis	Tim Barker	Mark Faulconer
Eric Easterling	Colleen Vidinoff	Chad McCollum	Brian Sutterfield	

The agencies involved were also key partners in this regionally important project. While the project lies within the sphere of influence, a majority of the construction was outside the City limits in Fresno County and the project bordered the City of Fresno. Therefore, a cooperative effort was essential to the success of the project. The City of Clovis would like to acknowledge the County of Fresno, the City of Fresno, as well as other agencies that partnered with Clovis to successfully deliver this project. Those agencies are:

**Fresno County**

Steve White  
Steven Deis  
Mohammad Alimi  
Tracy Barnes  
Steve Brandau  
Darin Findley

**City of Fresno**

Scott Mozier  
Andrew Benelli  
Harmanjit Dhaliwal  
David Boogard  
Jill Gormley  
David Row  
Alberto Nino

**Fresno Metropolitan Flood Control District (FMFCD)** – Jose Nave Ruiz, Jarrod Takemoto, Denise Wade, Dwayne Farrow

**Caltrans** – Noel Bucu and Pedron Mafi

**Fresno Council of Governments** – Les Beshears

**Fresno County Transportation Authority (FCTA)** – Rose Willems and Mike Leonardo

**Clovis Unified School District** – Kevin Peterson, Michael Johnston, Andrew Nabors, Denver Stairs

**Clovis Community College** – Lori Bennett, Lorrie Hopper, Cathy Ostos

**Comcast** – Michael Sue

**AT&T** – Paul Porter

**FID** – Chris Lundeen

**PG&E** – Rob Howard

The city would also like to recognize the list of Contractors that were involved in constructing this project. Those contractors include:

Yarbs Grading and Paving, Inc. – Prime Contractor	
Floyd Johnston Construction, Inc	Fresno Concrete
Sierra Traffic Markings	Madco Electric
California Construction Surveying	Safety Network



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: October 12, 2020

SUBJECT: Consider Approval - Res. 20-\_\_\_\_ a Resolution of Necessity to determine that the public interest and necessity require acquisition of portions of three properties for public purposes, and authorizing proceedings in eminent domain for said properties located on the north side of Shaw Avenue, east of De Wolf Avenue. Addresses: 3585 Shaw Avenue (previously 8196 E. Shaw Avenue), APN: 554-053-30; 3643 Shaw Avenue (previously 8248 E. Shaw Avenue), APN: 554-053-28; and 3693 Shaw Avenue (previously 8350 E. Shaw Avenue), APN: 554-053-25.

**Staff:** Ryan Burnett, Engineering Program Supervisor

**Recommendation:** Approve

ATTACHMENTS:

1. Resolution 20-\_\_\_\_\_ Resolution of Necessity
2. Location Map
3. Legal Descriptions and Diagram Exhibits of Properties
4. Notices of Proposed Adoption of Resolution of Necessity
5. Requests to Appear

### CONFLICT OF INTEREST

None

### RECOMMENDATION

For the City Council to hold a public hearing and approve the attached Resolution of Necessity (Attachment 1), approving the eminent domain process to acquire portions of three properties for public street and utility improvement purposes. The three properties are located at 3585 Shaw Avenue, 3643 Shaw Avenue, and 3693 Shaw Avenue, located on the north side of Shaw Avenue, east of De Wolf Avenue (Attachment 2 - Location Map).

### EXECUTIVE SUMMARY

This is a request to approve a Resolution of Necessity authorizing the eminent domain process to acquire right-of-way for the widening of Shaw Avenue, from De Wolf to McCall Avenues. Staff has not been able to come to an agreement with the property owners to

purchase the needed right-of-way. This action is needed to avoid further delays in the construction of improvements to Shaw Avenue. California Code of Civil Procedure Section 1245.240 requires the Resolution of Necessity be approved by a vote of two-thirds of all the members of the City Council.

## **BACKGROUND**

City staff has been in discussions for more than a year with the property owners of 3585 Shaw Avenue, 3643 Shaw Avenue, and 3693 Shaw Avenue, for the acquisition of public right-of-way across their property frontage, as follows:

- 9,583 square feet of right-of-way at 3585 Shaw Avenue, APN: 554-053-30, Owner: Roya Karimkhanzand
- 10,454 square feet of right-of-way at 3643 Shaw Avenue, APN: 554-053-28, Owners: Mitra Khoshrou and Azadeh Karimkhanzand
- 8,712 square feet of right-of-way at 3693 Shaw Avenue, APN: 554-053-25, Owners: John G. Thornburg and Rosemary S. Ting

The right-of-way is needed for the widening of Shaw Avenue as part of CIP 14-30 Shaw Avenue Improvements Project, De Wolf to McCall Avenues. The project will widen the two-mile segment of Shaw Avenue between De Wolf Avenue and McCall Avenues from a two-lane rural road to a five-to-six-lane urban arterial road. The six-lane section would extend from De Wolf Avenue to the Highland Alignment and would have the same basic design as the nearby sections of Shaw Avenue west of De Wolf Avenue. The five-lane section would extend from the Highland Alignment to McCall Avenue. The project will also include construction of curb, gutter, drive approaches, curb ramps, landscaping, irrigation, paving and overlay as necessary to match the existing pavement.

There were a total of 38 properties along Shaw Avenue from which additional right-of-way was needed for the project. In August 2018, the City entered into a consultant agreement with CPSI, Inc. to assist in the acquisition of needed right-of-way for the Project. CPSI has been successful in obtaining the right-of-way for 30 of the properties. Five of the properties are continuing through a negotiated acquisition process. The right-of-way for the remaining three properties is the subject of this Resolution of Necessity (Attachment 3 – Legal Descriptions and Diagram Exhibits of Properties).

Consultant and City staff have communicated and corresponded with the Property Owners, and their attorneys several times since March 2019, following the City's offers to purchase the right-of-way for the appraised values based on the appraisals obtained by the City. CPSI, Inc. and City staff have been unable to reach agreements with the property owners identified in this report for the purchase of the needed right-of-way. Therefore, City staff provided the Property Owners with written notice advising them of the scheduled hearing before the Clovis City Council to consider approval of the Resolution of Necessity as discussed in this report (Attachment 4 – Notices of Proposed Adoption of Resolution of Necessity).

Specific information regarding the three properties is included below:

3585 Shaw Avenue, APN: 554-053-30

Ms. Roya Karimkhanzand was provided the City's written offer to purchase by certified mail on February 27, 2019. Following the offer, the owner met with City staff and separately with the City's consultant, Mr. James Staudinger (CPSI, Inc.), to discuss the project and review the offer. In June 27, 2019, Ms. Karimkhanzand advised Mr. Staudinger, who met with her at the property, that she would be obtaining her own appraisal. Despite providing Ms. Karimkhanzand more than a year for the preparation of an appraisal, the City has yet to receive a copy of the appraisal. In February 2020, the owner requested we continue negotiations through her attorney, Mr. William Brewer. Both City staff and the City Attorney's Office have made several attempts to reach Mr. Brewer, over the last several months, with no response from him.

3643 Shaw Avenue, APN: 554-053-28

Ms. Mitra Khoshrou and Ms. Azadeh Karimkhanzand were provided the City's written offer to purchase by certified mail on February 27, 2019. Following the offer, the owner met with City staff, and separately with the City's consultant, Mr. James Staudinger, and concurrently with Ms. Roya Karimkhanzand, to discuss the project and review the offer. At that time, the owner advised the City that Ms. Roya Karimkhanzand would act as her representative in the negotiation process, and that they would obtain their own appraisal. Progress for this acquisition has followed that of Ms. Roya Karimkhanzand's property described above, with no response from their attorney.

3693 Shaw Avenue, APN: 554-053-25

Mr. Thornburg and Ms. Ting were provided the City's written offer to purchase by email on March 12, 2019. Following the offer, Mr. Thornburg met with City staff, and separately with the City's consultant, James Staudinger, on March 14, 2019, to discuss the project and review the offer. Mr. Thornburg retained an attorney early on in the negotiation process. In March 2019, the property owners' attorney, Thomas E. Campagne, advised the City that the property owners would be obtaining their own appraisal. After several months of correspondence between consultant staff and Mr. Campagne, and subsequent to a minor revision to the City's appraisal and revised offer (which was emailed to Mr. Campagne on July 3, 2019), the City was provided the owners' appraisal in November 2019. Shortly thereafter, consultant staff requested clarification and reasoning for severance damages included in the owners' appraisal. On March 13, 2020, Mr. Staudinger met with Mr. Campagne and the owner's appraiser, Mitch Dunshee. At the meeting, Mr. Dunshee did not provide the requested justification for the severance damages as valued in his appraisal report. At the meeting, the property owners' counsel mentioned he would propose a settlement with his clients that would include a request that the City replace the septic/leach system on the property with a City-provided sewer lateral. While the City is willing to negotiate with the owners in regards to the severance damages, and potential need to replace the septic system if it is damaged during construction the project, there has been no further communications or responses from their attorney to the repeated inquiries from the City since that March meeting.

Due to lack of communication from the property owners, and their attorneys, and the timing necessary for the Shaw Avenue street improvements, staff is moving forward with this request for the City Council to approve the Resolution of Necessity and authorization for staff to begin the eminent domain process. Adoption of the Resolution of Necessity by at least 2/3 approval of the City Council (minimum 4 votes required) is needed to commence the eminent domain process.

Even with the approval of the Resolution and the filing of the eminent domain case, City staff and the City Attorney's Office will continue to work with these property owners and their respective counsel to try to reach agreement on the terms of the right-of-way acquisitions. However, further delay in acquiring the needed right-of-way will delay the start of construction related activities, scheduled for spring 2021, for the Project. The right-of-way needed is shown on the exhibits attached.

The property owners were duly notified of this public hearing and given the opportunity to request to appear and be heard on this Resolution as provided by applicable law. The City received correspondence from William Brewer, attorney for Roya Karimkhanzand, Mitra Khoshrou and Azadeh Karimkhanzand, dated September 28, 2020 in response to the Notices to Appear (Attachment 5 – Opposition Letters and Requests to Appear). Council is advised that the only issues under consideration at this public hearing are limited to the matters listed below as provided in Code of Civil Procedure 1240.030, 1245.230, and 1245.235, which are the findings necessary to adopt a Resolution of Necessity. The fair market value of the needed right-of-way portions of properties is not a proper topic for consideration or discussion at the Resolution of Necessity hearing.

The necessary findings for the Resolution of Necessity are:

1. The public interest and necessity require the proposed project;
2. The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The properties described in the Resolution are necessary for the proposed project; and
4. An offer to acquire the real properties, pursuant to section 7267.2 of the Government Code, was made to the owners of record as provided by law.

#### **FISCAL IMPACT**

The Project is budgeted and will be paid for with Regional Measure "C" funds.

#### **REASON FOR RECOMMENDATION**

The eminent domain action is necessary in order to proceed with the acquisition of the necessary right-of-way and allow the improvements to Shaw Avenue between De Wolf and McCall Avenues to proceed.

**ACTIONS FOLLOWING APPROVAL**

Staff will pursue the eminent domain action in the manner provided by law, and will continue to try to reach agreements with the owners of the three properties.

Prepared by: Claudia Cazares, Management Analyst

Reviewed by: City Manager *JH*

**RESOLUTION NO. 20-\_\_\_****A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF PROPERTY FOR PUBLIC PURPOSES AND AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN**

**WHEREAS**, it appears necessary and desirable that the City of Clovis (hereinafter "City"), acquire fee title to a portion of three real properties commonly known as 3585 Shaw Avenue (APN: 554-053-30), 3643 Shaw Avenue (APN: 554-053-28), and 3693 Shaw Avenue (APN: 554-053-25), which portions are more particularly described and depicted in Attachment A hereto (the "Properties"); and

**WHEREAS**, the project for this resolution is the acquisition of fee title to the Properties, consisting of approximately 9,583 square feet from 3585 Shaw Avenue, 10,454 square feet from 3643 Shaw Avenue, and 8,712 from 3693 Shaw Avenue, for right-of-way needed for public street and utilities improvements along Shaw Avenue (the "Project"); and

**WHEREAS**, separate Notices of Hearing on the Intent of the City Council of the City of Clovis (hereinafter "Council") to Adopt the Resolution of Necessity were mailed to the record owners of each of the Properties in accordance with California Code of Civil Procedure section 1245.235(a) and (b). The Notices of Hearing advised the property owners of their right to be heard on the matters referred to therein on the date and at the time and place stated therein; and

**WHEREAS**, the hearing set out in the Notices of Hearing was held on October 12, 2020, at the time and place stated therein, and all interested parties were given an opportunity to be heard. The hearing was then closed and the matter considered by the Council, all as required by law; and

**WHEREAS**, this Council has received and considered all relevant factors and evidence, including, but not limited to, the Planning and Development Services Department staff report and matters referenced therein; facts which are otherwise commonly known, judicially noticeable and matters of public record; and all other relevant and proper evidence offered at the hearing by staff, affected property owners who made timely requests to appear and be heard at the hearing, and others who appeared and were heard.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVIS, BY A VOTE OF NOT LESS THAN 2/3 OF ITS MEMBERS, DECLARES, FINDS, AND RESOLVES AS FOLLOWS:**

1. The foregoing recitals are true and correct and, by this reference, incorporated herein as if set forth in full. The staff report on the Resolution of Necessity and all Attachments to this Resolution are incorporated by reference.

**ATTACHMENT 1**



2. The City is authorized to acquire the Properties for the Project by eminent domain proceedings pursuant to Section 37350.5 and 40404 of the Government Code of California.
3. The Properties to be acquired are generally located on the north side of Shaw, east of De Wolf Avenue, in the City of Clovis, County of Fresno, State of California. The extent of the Properties to be taken are as described in the legal descriptions and depicted in the diagrams attached hereto as Attachment A.
4. Based on all evidence presented in this matter, the Council specifically finds and determines that:
  - a. The public interest and necessity require the proposed Project.
  - b. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
  - c. The Properties as described in this Resolution are necessary for the proposed Project.
  - d. Offers to acquire the Properties, in accordance with section 7267.2 of the Government Code, were made to the respective owners of record of the Properties as provided by law.
  - e. The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (“the right to take”) to acquire the portions of the Properties described herein.
5. The portion or interest in the Properties, including any improvements thereon, which are authorized to be acquired by this Resolution, are as delineated on the said attachments, being real property completely situated within the territorial boundaries of the City.
6. The City plans that the date of use of the Properties for the Project will be within seven years from the date the complaint for eminent domain proceedings is filed.
7. The City Attorney of the City of Clovis is authorized and directed to institute and conduct to conclusion in the name of the City, proceedings in eminent domain. The proceedings are to be in accordance with the provisions of the Constitution of California and the Code of Civil Procedure in order to acquire in the name of the City a fee simple estate in and to a portion of the Properties herein described and such other interests as may be necessary for construction and operation of the Project. This Council finds and determines the public interest, necessity, and welfare require prejudgment possession of the Properties as soon as the same may be lawfully obtained. The City Attorney is authorized and directed to obtain such possession.

- 8. The Director of Finance of the City is authorized to pay, out of funds authorized or received, for the acquisition of the Properties, for prejudgment possession of the Properties, and for all other costs and expenses of acquisition, including, but not limited to, final compensation for the take and all fees and costs charged for City services in connection with this litigation.
  
- 9. The City Manager and City Attorney, or their authorized designees, are hereby authorized, without further action of this Council, to enter into any settlement regarding acquisition of the Properties by way of agreement and/or stipulation so long as the settlement is based upon approved evidence and appraisal opinion.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on October 12, 2020, by the following vote, to wit.

AYES:  
 NOES:  
 ABSTAIN:  
 ABSENT:

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

\_\_\_\_\_  
Mayor

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

## **Attachment A**

### **Legal Descriptions and Diagram Exhibits of Properties**

**3585 Shaw Avenue**  
**APN: 554-053-30**

**3643 Shaw Avenue**  
**APN: 554-053-28**

**3693 Shaw Avenue**  
**APN: 554-053-25**



Shaw Avenue

Resolution of Necessity

Parcels



Copyright nearmap 2015

ATTACHMENT 2 - LOCATION MAP

## **Attachment A**

### **Legal Descriptions and Diagram Exhibits of Properties**

## **ATTACHMENT 3**



**3585 Shaw Avenue**  
**APN: 554-053-30**

# EXHIBIT 'A'

SHEET 1 OF 2

That portion of the East Half of the Southwest Quarter of the Southwest Quarter of Section 12, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the official plat thereof described as follows:

Commencing at the Southeast Corner of the Southwest Quarter of the Southwest Quarter of said Section 12; thence North 89°24'05" West along the South Line of said Section 12, a distance of 165.04 feet to the southerly extension of the East Line of Parcel 3 of Parcel Map No. 3033 recorded May 20, 1976 in Book 20 of Parcel Maps at page 52, Fresno County Records, also being the TRUE POINT OF BEGINNING; thence continuing North 89°24'05" West along said South Line, a distance of 165.04 feet to the southerly extension of the West Line of said Parcel 3; thence North 0°26'22" East along said southerly extension and said West Line, a distance of 58.97 feet, thence South 89°03'38" East, a distance of 165.04 feet to the East Line of said Parcel 3; thence South 0°26'17" West along said East Line and the southerly extension thereof, a distance of 57.98 feet to the Point of Beginning.

Containing 0.22 acres more or less



August 16, 2018  
Katrina M. Olsen, LS 7058  
McPheeters & Associates  
1486 Tollhouse Rd, Suite 107  
Clovis, CA 93611  
(559) 299-9098  
[www.mcpheeters.com](http://www.mcpheeters.com)

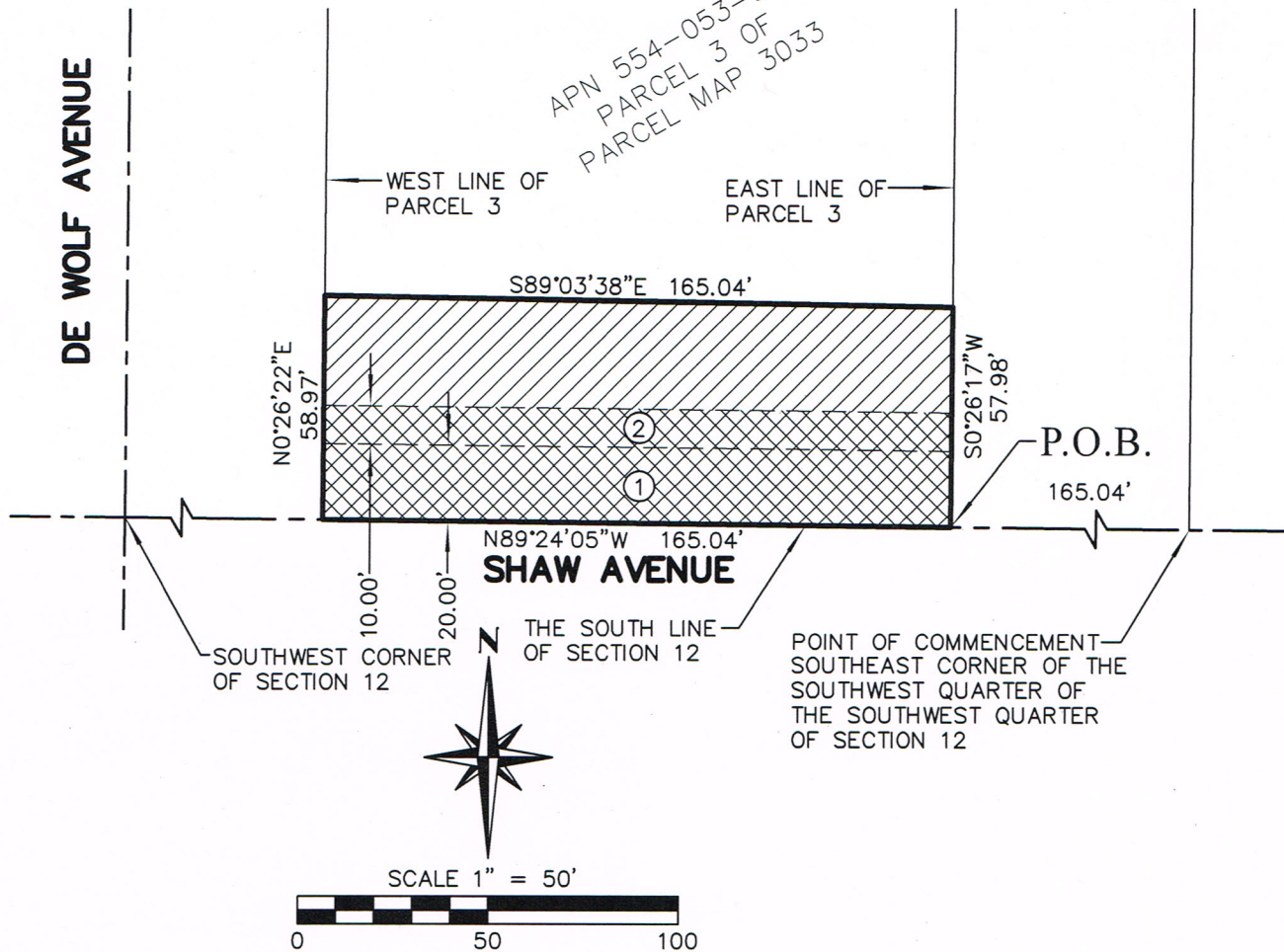
Job No. 118107

# EXHIBIT 'A'

AGENDA ITEM NO. 6.


SHEET 2 OF 2


APN 554-053-30  
PARCEL 3 OF  
PARCEL MAP 3033



## LEGEND

- ① 20' WIDE EASEMENT IN FAVOR OF FRESNO COUNTY RECORDED NOVEMBER 15, 1921 IN BOOK 140, PAGE 388, O.R.F.C..
- ② 10' WIDE EASEMENT OFFERED FOR DEDICATION AND ACCEPTED ON PARCEL MAP NO. 3033 RECORDED IN BOOK 20 OF PARCEL MAPS AT PAGE 52, F.C.R..

 INDICATES AREA TO BE DEEDED IN FEE CONTAINING 0.11 ACRES MORE OR LESS.

 INDICATES AREAS TO BE DEEDED IN FEE WITH EXISTING ROAD EASEMENTS AS REFERENCED CONTAINING 0.11 ACRES MORE OR LESS.

THIS PLAT IS BASED ON A FIELD SURVEY PROVIDED BY CITY OF CLOVIS, NOT RECORD DATA.



8-16-18

## CITY OF CLOVIS - ENGINEERING

### SHAW AVENUE

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN.

DATE: 08-16-2018  
DRAWN BY: LD  
FILE: 118107 RW WHC.DWG  
PLAT: 118107 6N PLAT.PDF



PREPARED BY:  
McPHEETERS & ASSOCIATES  
1486 TOLLHOUSE ROAD, #107  
CLOVIS, CA 93611  
(559) 299-9098

**3643 Shaw Avenue**  
**APN: 554-053-28**

# EXHIBIT 'A'

SHEET 1 OF 2

That portion of the West Half of the Southeast Quarter of the Southwest Quarter of Section 12, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the official plat thereof described as follows:

BEGINNING at the Southwest Corner of the Southeast Quarter of the Southwest Quarter of said Section 12; thence South 89°24'05" East along the South Line of said Section 12, a distance of 165.19 feet to the southerly extension of the East Line of Parcel 1 of Parcel Map No. 2670 recorded September 17, 1975 in Book 17 of Parcel Maps at page 77, Fresno County Records; thence North 0°25'52" East along said southerly extension and said East Line, a distance of 56.02 feet; thence North 89°03'38" West, a distance of 99.83 feet; thence North 0°56'22" East, a distance of 20.00 feet; thence North 89°03'38" West, a distance of 65.54 feet to a point on the West Line of said Parcel 1; thence South 0°26'12" West along said West line and the southerly extension thereof, a distance of 77.00 feet to the Point of Beginning.

Containing 0.24 acres more or less



August 16, 2018  
Katrina M. Olsen, LS 7058  
McPheeters & Associates  
1486 Tollhouse Rd, Suite 107  
Clovis, CA 93611  
(559) 299-9098  
[www.mcpheeters.com](http://www.mcpheeters.com)

Job No. 118107

# EXHIBIT 'A'

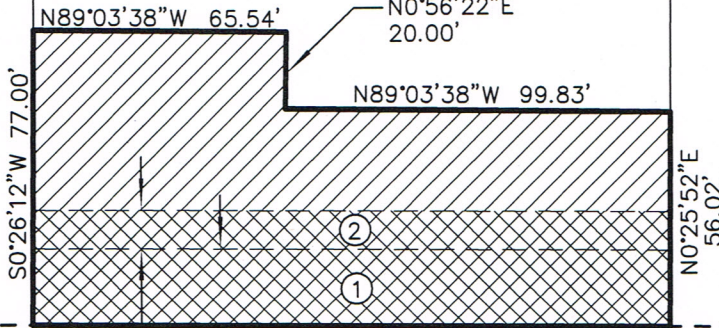
SHEET 2 OF 2

AGENDA ITEM NO. 6.

APN 554-053-28  
PARCEL 1 OF  
PARCEL MAP 2670

WEST LINE OF  
PARCEL 1

EAST LINE OF  
PARCEL 1



SOUTHEAST CORNER  
OF THE SOUTHWEST  
QUARTER OF  
SECTION 12

LEONARD AVENUE

SHAW AVENUE

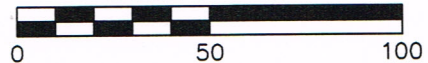
THE SOUTH LINE  
OF SECTION 12

P.O.B.

SOUTHWEST CORNER OF THE  
SOUTHWEST QUARTER OF THE  
SOUTHWEST QUARTER OF  
SECTION 12





SCALE 1" = 50'



## LEGEND

- ① 20' WIDE EASEMENT IN FAVOR OF FRESNO COUNTY RECORDED NOVEMBER 15, 1921 IN BOOK 140, PAGE 388, O.R.F.C..
- ② 10' WIDE EASEMENT OFFERED FOR DEDICATION AND ACCEPTED ON PARCEL MAP 2670 RECORDED IN BOOK 17 OF PARCEL MAPS AT PAGE 77, F.C.R..

 INDICATES AREA TO BE DEEDED IN FEE CONTAINING 0.13 ACRES MORE OR LESS.

 INDICATES AREAS TO BE DEEDED IN FEE WITH EXISTING ROAD EASEMENTS AS REFERENCED CONTAINING 0.11 ACRES MORE OR LESS.

THIS PLAT IS BASED ON A FIELD SURVEY PROVIDED BY CITY OF CLOVIS, NOT RECORD DATA.



## CITY OF CLOVIS - ENGINEERING



PREPARED BY:  
McPHEETERS & ASSOCIATES  
1486 TOLLHOUSE ROAD, #107  
CLOVIS, CA 93611  
(559) 299-9098

### SHAW AVENUE

A PORTION OF THE SOUTHWEST QUARTER OF  
SECTION 12, TOWNSHIP 13 SOUTH, RANGE 21 EAST,  
MOUNT DIABLO BASE AND MERIDIAN.

DATE: 08-16-2018  
DRAWN BY: LD  
FILE: 118107 RW WHC.DWG  
PLAT: 118107 8N PLAT.PDF

**3693 Shaw Avenue**  
**APN: 554-053-25**

# EXHIBIT 'A'

SHEET 1 OF 2

That portion of the West Half of the Southeast Quarter of the Southwest Quarter of Section 12, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the official plat thereof described as follows:

BEGINNING at the Southeast Corner of the West Half of the Southeast Quarter of the Southwest Quarter of said Section 12; thence North 89°24'05" West along the South Line of said Section 12, a distance of 164.99 feet to the southerly extension of the West Line of Parcel 4 of Parcel Map No. 2670 recorded September 17, 1975 in Book 17 of Parcel Maps at page 77, Fresno County Records; thence North 0°25'52" East along said southerly extension and said West Line, a distance of 54.06 feet; thence South 89°03'38" East, a distance of 165.00 feet to the East Line of said Parcel 4; thence South 0°25'52" West along said East Line and the southerly extension thereof, a distance of 53.07 feet to the Point of Beginning.

Containing 0.20 acres more or less



December 6, 2018  
Katrina M. Olsen, LS 7058  
McPheeters & Associates  
1486 Tollhouse Rd, Suite 107  
Clovis, CA 93611  
(559) 299-9098  
[www.mcpheeters.com](http://www.mcpheeters.com)

Job No. 118107



# EXHIBIT 'A'

SHEET 2 OF 2

AGENDA ITEM NO. 6.

APN 554-053-25  
PARCEL 4 OF  
PARCEL MAP 2670

WEST LINE OF  
PARCEL 4

EAST LINE OF  
PARCEL 4

THE WEST LINE OF  
THE EAST HALF OF  
THE SOUTHEAST  
QUARTER OF THE  
SOUTHWEST QUARTER  
OF SECTION 12

LEONARD AVENUE

S89°03'38"E 165.00'

N0°25'52"E  
54.06'

S0°25'52"W  
53.07'

N89°24'05"W 164.99'

SHAW AVENUE

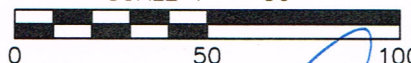
THE SOUTH LINE  
OF SECTION 12

P.O.B.  
SOUTHEAST CORNER  
OF THE WEST HALF  
OF THE SOUTHEAST  
QUARTER OF THE  
SOUTHWEST QUARTER  
OF SECTION 12

SOUTHEAST CORNER  
OF THE SOUTHWEST  
QUARTER OF  
SECTION 12





SCALE 1" = 50'



## LEGEND

- ① 20' WIDE EASEMENT IN FAVOR OF FRESNO COUNTY RECORDED NOVEMBER 15, 1921 IN BOOK 140, PAGE 388, O.R.F.C..
- ② 10' WIDE EASEMENT OFFERED FOR DEDICATION AND ACCEPTED ON PARCEL MAP 2670 RECORDED IN BOOK 17 OF PARCEL MAPS AT PAGE 77, F.C.R..

 INDICATES AREA TO BE DEEDED IN FEE CONTAINING 0.09 ACRES MORE OR LESS.

 INDICATES AREAS TO BE DEEDED IN FEE WITH EXISTING ROAD EASEMENTS AS REFERENCED CONTAINING 0.11 ACRES MORE OR LESS.

THIS PLAT IS BASED ON A FIELD SURVEY PROVIDED BY CITY OF CLOVIS, NOT RECORD DATA.



12-6-18

## CITY OF CLOVIS - ENGINEERING

### SHAW AVENUE

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN.

DATE: 08-16-2018  
DRAWN BY: LD  
FILE: 118107 RW WHC.DWG  
PLAT: 118107 11N PLAT  
12-6-18.PDF  
REVISED 12-6-18



PREPARED BY:  
McPHEETERS & ASSOCIATES  
1486 TOLLHOUSE ROAD, #107  
CLOVIS, CA 93611  
(559) 299-9098

NOTICES OF PROPOSED ADOPTION OF RESOLUTION OF NECESSITY



# CITY *of* CLOVIS

## PLANNING & DEVELOPMENT

1033 FIFTH STREET • CLOVIS, CA 93612

### NOTICE OF HEARING ON RESOLUTION OF NECESSITY (Code Civ. Proc., § 1245.235)

September 15, 2020

Roya Ghalam (Karimkhanzand)  
2637 E. Houston Avenue  
Fresno, CA 93720

Re: Notice of Proposed Adoption of Resolution of Necessity;  
APN 554-053-30 (Portion)

Dear Ms. Ghalam:

The City of Clovis ("City") has previously informed you of its interest in purchasing a portion of your property identified as APN 554-053-30 and located at 3585 Shaw Avenue (previous Address: 8196 E. Shaw Avenue) ("Property") in Clovis, California for a street improvement project on Shaw Avenue ("Project"). The City has offered to pay you the full amount of the City's appraised value of the Property. The City remains interested in purchasing your Property on a voluntary basis, and negotiating to that end. However, because the City must move forward with the Project, the City has no choice but to initiate the process for acquiring your Property involuntarily, by means of eminent domain, if necessary.

Accordingly, notice is hereby given that on October 12, 2020, at 6:00 p.m. or as soon thereafter as the matter may be heard, at the Clovis City Council chambers, located at 1033 5th Street, Clovis, California, the Clovis City Council will consider adopting a proposed Resolution of Necessity authorizing condemnation of the Property. The public project is the acquisition of property for a right of way and other easements and/or fee interests for the City's street improvement project on Shaw Avenue.

As the record owner of the Property, you and/or your representative have the right to appear before the City Council and be heard on the matters referred to in California Code of Civil Procedure section 1240.030, which are:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and
3. Whether the real property sought to be acquired is necessary for the project.

If you wish to appear and be heard on October 12, 2020, on any or all of the above matters, please mail or deliver the written request to appear enclosed with this letter. The written request must be received by the City no later than 3:00 p.m. on October 6, 2020. If no request to appear is received, you will waive your right to appear and be heard on the above matters at the City Council meeting.

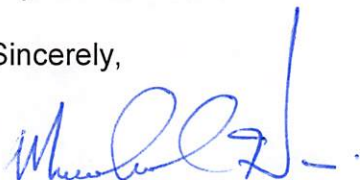
Failure to make a written request to appear before the City Council meeting on October 12, 2020, does not mean that you agree with the City's previous offer to purchase your Property. The proposed adoption of the resolution of necessity addresses only the issues set forth above. **The resolution of necessity hearing will not address the fair market value of the Property. Any fair market value issues will be addressed in the eminent domain proceedings if the resolution of necessity is adopted.**

Enclosed for your reference, or your attorney's reference, are copies of sections 1240.030 and 1245.235 of the Code of Civil Procedure, which describe the resolution of necessity process.

**PLEASE BE ADVISED THAT YOUR FAILURE TO FILE A WRITTEN REQUEST WITH THE CITY REQUESTING TO APPEAR AND BE HEARD AT THE ABOVE REFERENCED ADDRESS BY OCTOBER 6, 2020 WILL RESULT IN A WAIVER OF YOUR RIGHT TO APPEAR AND BE HEARD ON THE PROPOSED ADOPTION OF THE RESOLUTION OF NECESSITY REFERENCED ABOVE.**

Again, please be assured that the City still desires to enter into a voluntary purchase agreement with you for the acquisition of your Property, and the giving of this Notice is not meant to preclude that possibility. However, the City's need to proceed with the Project requires that it move forward in an attempt to resolve this matter. Please contact me at (559) 324-2350, or Claudia Cazares at (559) 324-2387, if you would like to discuss any aspect of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Harrison", with a long vertical stroke extending upwards from the end of the signature.

Michael Harrison, City Engineer  
Engineering Division

Enclosures

Copy: William Brewer, Property Owner's Attorney

WRITTEN REQUEST TO APPEAR AND  
BE HEARD ON RESOLUTION OF NECESSITY

TO: Michael Harrison, City Engineer  
Planning and Development Services Department  
Engineering Division  
City of Clovis  
1033 5th Street  
Clovis, CA 93612

FROM: Roya Ghalam  
RE: APN 554-053-30 (Portion)

Please consider this our written request to be heard on the Resolution of Necessity item scheduled for October 12, 2020 at 6:00 p.m. before the Clovis City Council at 1033 5th Street, Clovis, California. We understand you must receive this request no later than 3:00 p.m. on October 6, 2020 at the above address.

We understand that the matters to be heard are:

- a. That the public interest and necessity require the project;
- b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. The real property ("property") sought to be acquired is necessary for the project;  
and

We further understand that the hearing will **not** address the issue of what is the fair market value of the property.

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

*[You may mail by first class mail, or certified mail, or you may hand deliver this notice to the City Offices.]*

## California Code of Civil Procedure

### 1240.030.

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.

### 1245.235.

(a) The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030.

(b) The notice required by subdivision (a) shall be sent by first-class mail to each person described in subdivision (a) and shall state all of the following:

- (1) The intent of the governing body to adopt the resolution.
- (2) The right of such person to appear and be heard on the matters referred to in Section 1240.030.
- (3) Failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard.

(c) The governing body, or a committee of not less than 11 members thereof designated by the governing body if the governing body has more than 40 members, shall hold a hearing at which all persons described in subdivision (a) who filed a written request within the time specified in the notice may appear and be heard on the matters

referred to in Section 1240.030. Such a committee shall be reasonably representative of the various geographical areas within the public entity's jurisdiction. The governing body need not give an opportunity to appear and be heard to any person who fails to so

file a written request within the time specified in the notice. If a committee is designated by the governing body pursuant to this subdivision to hold the hearing, the committee, subsequent to the hearing, shall provide the governing body and any person described in subdivision (a) who has appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any person described in subdivision (a) who has appeared before the committee shall also be given an opportunity to appear and be heard before the governing body on the matters referred to in Section 1240.030.

(d) Notwithstanding subdivision (b), the governing body may satisfy the requirements of this section through any other procedure that has given each person described in subdivision (a) reasonable written personal notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030.



# CITY *of* CLOVIS

## PLANNING & DEVELOPMENT

1033 FIFTH STREET • CLOVIS, CA 93612

### NOTICE OF HEARING ON RESOLUTION OF NECESSITY (Code Civ. Proc., § 1245.235)

Roya Ghalam  
Mitra Khoshrou  
Azadeh Karimkhanzand  
7 Timberland  
Aliso Viejo, CA 92656

Re: Notice of Proposed Adoption of Resolution of Necessity;  
APN 554-053-28 (Portion)

Dear Roya Ghalam, Mitra Khoshrou and Ms. Karimkhanzand:

The City of Clovis ("City") has previously informed you of its interest in purchasing a portion of your property identified as APN 554-053-28 and located at 3643 Shaw Avenue (previous address: 8248 E. Shaw Avenue) ("Property") in Clovis, California for a street improvement project on Shaw Avenue ("Project"). The City has offered to pay you the full amount of the City's appraised value of the Property. The City remains interested in purchasing your Property on a voluntary basis, and negotiating to that end. However, because the City must move forward with the Project, the City has no choice but to initiate the process for acquiring your Property involuntarily, by means of eminent domain, if necessary.

Accordingly, notice is hereby given that on October 12, 2020, at 6:00 p.m. or as soon thereafter as the matter may be heard, at the Clovis City Council chambers, located at 1033 5th Street, Clovis, California, the Clovis City Council will consider adopting a proposed Resolution of Necessity authorizing condemnation of the Property. The public project is the acquisition of property for a right of way and other easements and/or fee interests for the City's street improvement project on Shaw Avenue.

As the record owner of the Property, you and/or your representative have the right to appear before the City Council and be heard on the matters referred to in California Code of Civil Procedure section 1240.030, which are:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and
3. Whether the real property sought to be acquired is necessary for the project.

If you wish to appear and be heard on October 12, 2020, on any or all of the above matters, please mail or deliver the written request to appear enclosed with this letter. The written request must be received by the City no later than 3:00 p.m. on October 6, 2020. If no request to appear is received, you will waive your right to appear and be heard on the above matters at the City Council meeting.

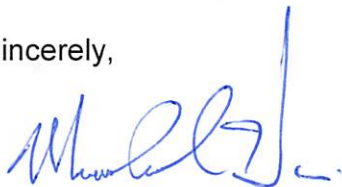
Failure to make a written request to appear before the City Council meeting on October 12, 2020, does not mean that you agree with the City's previous offer to purchase your Property. The proposed adoption of the resolution of necessity addresses only the issues set forth above. **The resolution of necessity hearing will not address the fair market value of the Property. Any fair market value issues will be addressed in the eminent domain proceedings if the resolution of necessity is adopted.**

Enclosed for your reference, or your attorney's reference, are copies of sections 1240.030 and 1245.235 of the Code of Civil Procedure, which describe the resolution of necessity process.

**PLEASE BE ADVISED THAT YOUR FAILURE TO FILE A WRITTEN REQUEST WITH THE CITY REQUESTING TO APPEAR AND BE HEARD AT THE ABOVE REFERENCED ADDRESS BY OCTOBER 6, 2020 WILL RESULT IN A WAIVER OF YOUR RIGHT TO APPEAR AND BE HEARD ON THE PROPOSED ADOPTION OF THE RESOLUTION OF NECESSITY REFERENCED ABOVE.**

Again, please be assured that the City still desires to enter into a voluntary purchase agreement with you for the acquisition of your Property, and the giving of this Notice is not meant to preclude that possibility. However, the City's need to proceed with the Project requires that it move forward in an attempt to resolve this matter. Please contact me at (559) 324-2350, or Claudia Cazares at (559) 324-2387, if you would like to discuss any aspect of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Harrison".

Michael Harrison, City Engineer  
Engineering Division

Enclosures

Copy: William Brewer, Property Owner's Attorney



WRITTEN REQUEST TO APPEAR AND  
BE HEARD ON RESOLUTION OF NECESSITY

TO: Michael Harrison, City Engineer  
Planning and Development Services Department  
Engineering Division  
City of Clovis  
1033 5th Street  
Clovis, CA 93612

FROM: Roya Ghalam, Mitra Khoshrou and Azadeh Karimkhanzand  
RE: APN 554-053-28 (Portion)

Please consider this our written request to be heard on the Resolution of Necessity item scheduled for October 12, 2020 at 6:00 p.m. before the Clovis City Council at 1033 5th Street, Clovis, California. We understand you must receive this request no later than 3:00 p.m. October 6, 2020 at the above address.

We understand that the matters to be heard are:

- a. That the public interest and necessity require the project;
- b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. The real property ("property") sought to be acquired is necessary for the project; and

We further understand that the hearing will **not** address the issue of what is the fair market value of the property.

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

*[You may mail by first class mail, or certified mail, or you may hand deliver this notice to the City Offices.]*

## California Code of Civil Procedure

### 1240.030.

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.

### 1245.235.

(a) The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030.

(b) The notice required by subdivision (a) shall be sent by first-class mail to each person described in subdivision (a) and shall state all of the following:

- (1) The intent of the governing body to adopt the resolution.
- (2) The right of such person to appear and be heard on the matters referred to in Section 1240.030.
- (3) Failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard.

(c) The governing body, or a committee of not less than 11 members thereof designated by the governing body if the governing body has more than 40 members, shall hold a hearing at which all persons described in subdivision (a) who filed a written request within the time specified in the notice may appear and be heard on the matters

referred to in Section 1240.030. Such a committee shall be reasonably representative of the various geographical areas within the public entity's jurisdiction. The governing body need not give an opportunity to appear and be heard to any person who fails to so

file a written request within the time specified in the notice. If a committee is designated by the governing body pursuant to this subdivision to hold the hearing, the committee, subsequent to the hearing, shall provide the governing body and any person described in subdivision (a) who has appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any person described in subdivision (a) who has appeared before the committee shall also be given an opportunity to appear and be heard before the governing body on the matters referred to in Section 1240.030.

(d) Notwithstanding subdivision (b), the governing body may satisfy the requirements of this section through any other procedure that has given each person described in subdivision (a) reasonable written personal notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030.



# CITY *of* CLOVIS

## PLANNING & DEVELOPMENT

1033 FIFTH STREET • CLOVIS, CA 93612

### NOTICE OF HEARING ON RESOLUTION OF NECESSITY (Code Civ. Proc., § 1245.235)

September 15, 2020

John Thornburg  
Rosemary Ting  
P.O. Box 3252  
Clovis, CA 93613

Re: Notice of Proposed Adoption of Resolution of Necessity;  
APN 554-053-25 (Portion)

Dear Mr. Thornburg and Ms. Ting:

The City of Clovis ("City") has previously informed you of its interest in purchasing a portion of your property identified as APN 554-053-25 and located at 3693 Shaw Avenue (previous address: 8350 E. Shaw Avenue) ("Property") in Clovis, California for a street improvement project on Shaw Avenue ("Project"). The City has offered to pay you the full amount of the City's appraised value of the Property. The City remains interested in purchasing your Property on a voluntary basis, and negotiating to that end. However, because the City must move forward with the Project, the City has no choice but to initiate the process for acquiring your Property involuntarily, by means of eminent domain, if necessary.

Accordingly, notice is hereby given that on October 12, 2020, at 6:00 p.m. or as soon thereafter as the matter may be heard, at the Clovis City Council chambers, located at 1033 5th Street, Clovis, California, the Clovis City Council will consider adopting a proposed Resolution of Necessity authorizing condemnation of the Property. The public project is the acquisition of property for a right of way and other easements and/or fee interests for the City's street improvement project on Shaw Avenue.

As the record owner of the Property, you and/or your representative have the right to appear before the City Council and be heard on the matters referred to in California Code of Civil Procedure section 1240.030, which are:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and
3. Whether the real property sought to be acquired is necessary for the project.

If you wish to appear and be heard on October 12, 2020, on any or all of the above matters, please mail or deliver the written request to appear, enclosed with this letter. The written request must be received by the City no later than 3:00 p.m. on October 6, 2020. If no request to appear is received, you will waive your right to appear and be heard on the above matters at the City Council meeting.

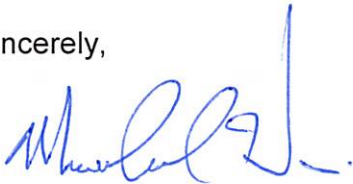
Failure to make a written request to appear before the City Council meeting on October 12, 2020, does not mean that you agree with the City's previous offer to purchase your Property. The proposed adoption of the resolution of necessity addresses only the issues set forth above. **The resolution of necessity hearing will not address the fair market value of the Property. Any fair market value issues will be addressed in the eminent domain proceedings if the resolution of necessity is adopted.**

Enclosed for your reference, or your attorney's reference, are copies of sections 1240.030 and 1245.235 of the Code of Civil Procedure, which describe the resolution of necessity process.

**PLEASE BE ADVISED THAT YOUR FAILURE TO FILE A WRITTEN REQUEST WITH THE CITY REQUESTING TO APPEAR AND BE HEARD AT THE ABOVE REFERENCED ADDRESS BY OCTOBER 6, 2020 WILL RESULT IN A WAIVER OF YOUR RIGHT TO APPEAR AND BE HEARD ON THE PROPOSED ADOPTION OF THE RESOLUTION OF NECESSITY REFERENCED ABOVE.**

Again, please be assured that the City still desires to enter into a voluntary purchase agreement with you for the acquisition of your Property, and the giving of this Notice is not meant to preclude that possibility. However, the City's need to proceed with the Project requires that it move forward in an attempt to resolve this matter. Please contact me at (559) 324-2350, or Claudia Cazares at (559) 324-2387, if you would like to discuss any aspect of this matter.

Sincerely,



Michael Harrison, City Engineer  
Engineering Division

Enclosures

Copy: Thomas E. Campagne, Property Owner's Attorney, Airport Office Center  
1685 N. Helm Avenue  
Fresno, California 93727

Copy: John Thornburg/Rosemary Ting, 3693 Shaw Avenue, Clovis, CA 93619

WRITTEN REQUEST TO APPEAR AND  
BE HEARD ON RESOLUTION OF NECESSITY

TO: Michael Harrison, City Engineer  
Planning and Development Services Department  
Engineering Division  
City of Clovis  
1033 5th Street  
Clovis, CA 93612

FROM: John Thornburg and Rosemary Ting  
APN 554-053-25 (Portion)

Please consider this our written request to be heard on the Resolution of Necessity item scheduled for October 12, 2020 at 6:00 p.m. before the Clovis City Council at 1033 5th Street, Clovis, California. We understand you must receive this request no later than 3:00 p.m. on October 6, 2020 at the above address.

We understand that the matters to be heard are:

- a. That the public interest and necessity require the project;
- b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. The real property ("property") sought to be acquired is necessary for the project; and

We further understand that the hearing will **not** address the issue of what is the fair market value of the property.

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

DATED: \_\_\_\_\_, 2020 \_\_\_\_\_  
Property Owner (or Authorized Agent)

*[You may mail by first class mail, or certified mail, or you may hand deliver this notice to the City Offices.]*

## California Code of Civil Procedure

### 1240.030.

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.

### 1245.235.

(a) The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030.

(b) The notice required by subdivision (a) shall be sent by first-class mail to each person described in subdivision (a) and shall state all of the following:

- (1) The intent of the governing body to adopt the resolution.
- (2) The right of such person to appear and be heard on the matters referred to in Section 1240.030.
- (3) Failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard.

(c) The governing body, or a committee of not less than 11 members thereof designated by the governing body if the governing body has more than 40 members, shall hold a hearing at which all persons described in subdivision (a) who filed a written request within the time specified in the notice may appear and be heard on the matters

referred to in Section 1240.030. Such a committee shall be reasonably representative of the various geographical areas within the public entity's jurisdiction. The governing body need not give an opportunity to appear and be heard to any person who fails to so

file a written request within the time specified in the notice. If a committee is designated by the governing body pursuant to this subdivision to hold the hearing, the committee, subsequent to the hearing, shall provide the governing body and any person described in subdivision (a) who has appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any person described in subdivision (a) who has appeared before the committee shall also be given an opportunity to appear and be heard before the governing body on the matters referred to in Section 1240.030.

(d) Notwithstanding subdivision (b), the governing body may satisfy the requirements of this section through any other procedure that has given each person described in subdivision (a) reasonable written personal notice and a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030.

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A. EMORY WISHON III  
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RUSSELL K. RYAN†

\*A PROFESSIONAL CORPORATION  
†ALSO ADMITTED IN UTAH

POST OFFICE BOX 9099  
FRESNO, CALIFORNIA 93790-9099

September 28, 2020

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Michael Harrison, City Engineer  
Planning and Development Services Department  
Engineering Division  
City of Clovis  
1033 5<sup>th</sup> Street  
Clovis, California 93612

Re: **October 12, 2020, RON Hearing for: APN 554-053-30 (portion)**  
**Grantor: Roya Ghalam (Karimkhanzand)**

Dear Mr. Harrison:

Owner of the referenced Assessor’s Parcel Number, Roya Ghalam (Karimkhanzand) (“**Owner**”) respectfully submits her objections to the intended adoption of the Resolution of Necessity (“**RON**”) following the notice of public hearing for October 12, 2020, pursuant to C.C.P. section 1245.235. We respectfully request that these objections be lodged in the official record of the public hearing and proceeding.

Owner objects on the basis that the proposed adoption of the RON would authorize an illegal act, based substantially if not entirely, on multiple violations of law, each of which are also alleged to have been, and continue to be violations of law. The exercise of the power of eminent domain may only be utilized where it is authorized by statute and where it satisfies the constitutional mandate of public use and just compensation. See the enabling statute in California, the Eminent Domain Law, is Title 7, Chapters 1 through 12 (sections 1230.010-1273.050) of the Code of Civil Procedure; and Cal. Const. Art. 1 section 19.

Owner further objects on the grounds that the authorization to proceed with the condemnation of her property would necessarily be based on a flawed adoption of the noticed RON in light of the following statutory provisions which demonstrates that the

MOTSCHIEDLER, MICHAELIDES, WISHON,  
BREWER & RYAN, LLP

Michael Harrison, City Engineer      ATTORNEYS AT LAW

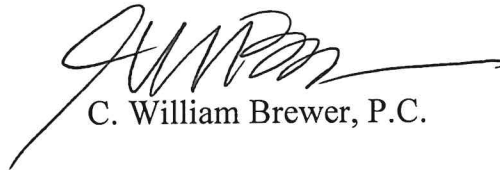
September 28, 2020

Page 2

public use findings cannot be made: Code of Civil Procedure sections 52a. 1240.020, 1240.110, 1240.120 and 1240.130.

Owner further objects on the grounds that the appraisal statement and appraisal supporting the precondemnation offer required by Government Code section 7267.2 was inadequate and did not comply with Government Code section 7267.2, and therefore, no valid precondemnation offer has been made. Therefore, this required finding and foundational requirement which is a necessary condition precedent to proceeding to hearing cannot be satisfied.

Very truly yours,



C. William Brewer, P.C.

CWB:bmc

cc: Roya Ghalam (Karimkhanzand)



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September 28, 2020

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Engineering Division  
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1033 5<sup>th</sup> Street  
Clovis, California 93612

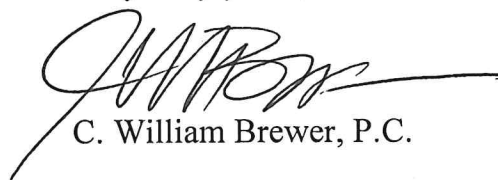
Re: **October 12, 2020, RON Hearing for: APN 554-053-30 (portion)**  
**Grantor: Roya Ghalam (Karimkhanzand)**

Dear Mr. Harrison:

With respect to the purchase of a portion of property described above for a street improvement project on Shaw Avenue, this letter will serve as my request to appear and be heard at the City of Clovis' hearing on the adoption of the Resolution of Necessity now scheduled for October 12, 2020 at 6:00 p.m. This request is made on behalf of the record owner of the impacted property who also plans to similarly appear. We respectfully request that this reply to the Notice of Hearing referenced below, be lodged in the official record of this proceeding.

This request is made in accordance with the requirements set forth in the City of Clovis' Notice of Proposed Adoption of Resolution of Necessity dated September 15, 2020.

Very truly yours,

  
C. William Brewer, P.C.

CWB:bmc

cc: **Roya Ghalam (Karimkhanzand)**

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September 28, 2020

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Michael Harrison, City Engineer  
 Planning and Development Services Department  
 Engineering Division  
 City of Clovis  
 1033 5<sup>th</sup> Street  
 Clovis, California 93612

Re: **October 12, 2020, RON Hearing for: APN 554-053-28 (portion)  
 Grantor: Mitra Khoshrou (Karimkhanzand) and Azadeh  
 Karimkhanzand**

Dear Mr. Harrison:

Owners of the referenced Assessor’s Parcel Number, Mitra Khoshrou (Karimkhanzand) and Azadeh Karimkhanzand (collectively “**Owner**”) respectfully submits their objections to the intended adoption of the Resolution of Necessity (“**RON**”) following the notice of public hearing for October 12, 2020, pursuant to C.C.P. section 1245.235. We respectfully request that these objections be lodged in the official record of the public hearing and proceeding.

Owner objects on the basis that the proposed adoption of the RON would authorize an illegal act, based substantially if not entirely, on multiple violations of law, each of which are also alleged to have been, and continue to be violations of law. The exercise of the power of eminent domain may only be utilized where it is authorized by statute and where it satisfies the constitutional mandate of public use and just compensation. See the enabling statute in California, the Eminent Domain Law, is Title 7, Chapters 1 through 12 (sections 1230.010-1273.050) of the Code of Civil Procedure; and Cal. Const. Art. 1 section 19.

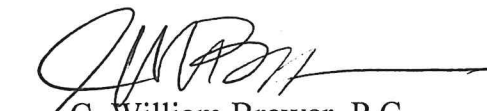
MOTSCHIEDLER, MICHAELIDES, WISHON,  
BREWER & RYAN, LLP

Michael Harrison, City Engineer     ATTORNEYS AT LAW  
September 23, 2020  
Page 2

Owner further objects on the grounds that the authorization to proceed with the condemnation of her property would necessarily be based on a flawed adoption of the noticed RON in light of the following statutory provisions which demonstrates that the public use findings cannot be made: Code of Civil Procedure sections 52a. 1240.020, 1240.110, 1240.120 and 1240.130; Streets & Highways Code sections 2704.08(c )(2) (A), (B), (C ), (D), (E), (F), (G), (H), (I), (J),(K); 2704.08(g), 2704.04, (c ), 2704.09 (a), (b), (f), and AB 3034, subsection (f) of section 8.

Owner further objects on the grounds that the appraisal statement and appraisal supporting the precondemnation offer required by Government Code section 7267.2 was inadequate and did not comply with Government Code section 7267.2, and therefore, no valid precondemnation offer has been made. Therefore, this required finding and foundational requirement which is a necessary condition precedent to proceeding to hearing cannot be satisfied.

Very truly yours,

  
C. William Brewer, P.C.

CWB:bmc

cc:    Mitra Khoshrou (Karimkhanzand)  
       Azadeh Karimkhanzand

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September 28, 2020

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Michael Harrison, City Engineer  
Planning and Development Services Department  
Engineering Division  
City of Clovis  
1033 5<sup>th</sup> Street  
Clovis, California 93612


Re: **October 12, 2020, RON Hearing for: APN 554-053-28 (portion)**  
**Grantor: Mitra Khoshrou (Karimkhanzand) and Azadeh Karimkhanzand**

Dear Mr. Harrison:

With respect to the purchase of a portion of property described above for a street improvement project on Shaw Avenue, this letter will serve as my request to appear and be heard at the City of Clovis' hearing on the adoption of the Resolution of Necessity now scheduled for October 12, 2020 at 6:00 p.m. This request is made on behalf of the record owners of the impacted property who also plan to similarly appear. We respectfully request that this reply to the Notice of Hearing referenced below, be lodged in the official record of this proceeding.

This request is made in accordance with the requirements set forth in the City of Clovis' Notice of Proposed Adoption of Resolution of Necessity dated September 15, 2020.

Very truly yours,

  
C. William Brewer, P.C.

CWB:bmc

cc: Mitra Khoshrou (Karimkhanzand)  
Azadeh Karimkhanzand



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: October 12, 2020

SUBJECT: Consider Approval – Res. 20-\_\_\_ Adoption of a Resolution amending the 2019-2020 Annual Action Plan; and Amending the FY 2020-2021 Housing and Community Development Budget to Increase the Funds by \$602,534.

**Staff:** Heidi Crabtree, Housing Program Coordinator

**Recommendation:** Approve

ATTACHMENTS: 1. Resolution Amending 2019-2020 Annual Action Plan  
2. Resolution Amending 2020-2021 HCD Budget

### CONFLICT OF INTEREST

None.

### RECOMMENDATION

Consider amending the 2019-2020 Annual Action Plan to add a recently received allocation of \$602,534 in Community Development Block Grant (CDBG)-CV3 funds to the plan, and to direct the use of those funds for the Emergency Housing Payment Program, and amending the FY 2020-2021 Housing and Community Development Budget to increase the funds by \$602,534.

### EXECUTIVE SUMMARY

The City of Clovis received notification from the U.S. Department of Housing and Urban Development (HUD) that the City has received an allocation of CDBG-CV3 funds in the amount of \$602,534. In order to utilize those funds, City Council must adopt an amendment to its CDBG Annual Action Plan to establish use of the funds.

### BACKGROUND

The Federal Government authorized the CARES Act which provides funding in response to the COVID-19 pandemic. As a part of the CARES Act, Clovis received an additional CDBG-CV allocation of \$441,214; \$200,000 of which Council approved for an Emergency Housing

Payment Program. This program was designed to assist low-income households who have suffered a COVID-related income loss with their mortgage or rent payments. The program officially launched on July 15, 2020, and by August 7, 2020, all funds had been exhausted. The program was able to provide assistance to 46 households. City Council then again amended the Annual Action Plan to add approximately \$147,000 in CDBG funds to the program. To date, 40 households have been assisted with those additional funds, and the funding is now exhausted. The demand for assistance has been tremendous and staff has continued to receive applications from eligible households. Currently there are approximately 68 eligible applications on file in case additional funding becomes available, with new applications being submitted on a daily basis. It is estimated the addition of the CDBG-CV3 funds to the program could assist approximately 130 households. It is estimated the Emergency Housing Payment Program in total will aid approximately 216 households.

The U.S. Department of Housing and Urban Development (HUD) requires that grantees follow their adopted Citizen Participation Plan when a substantial change is proposed to the allocation priorities or a substantial change in the method of distribution of funds for activities funded in the City's Annual Action Plan. This includes notification to the public of the proposed amendment with a period of review and comment. On October 5, 2020, the proposed amendment notice was published for public review and comment on the City of Clovis website and social media where it remained for the mandatory five-day period. HUD has provided a waiver for newspaper publication of the notice and a waiver allowing a five-day comment period (instead of the mandated 30 days) for funds being used to prevent, prepare for and respond to COVID-19. In order to expend these funds, a budget amendment is also being requested to increase the FY 2020-2021 Housing and Community Development Budget by \$602,534.

### **FISCAL IMPACT**

A total of \$602,534 in CDBG-CV3 funds would be made available for use in the City's Emergency Housing Payment Program. With adoption of the proposed HCD budget amendment, all funds would be available for use in the 2020-2021 City of Clovis budget. HUD distributes the funds on a reimbursement basis. There would be no impact to the General Fund Budget.

### **REASON FOR RECOMMENDATION**

To provide an additional \$602,534 for the Emergency Housing Payment Program so that the City can continue to provide assistance to low-income households who have suffered a COVID-related income loss.

### **ACTIONS FOLLOWING APPROVAL**

Staff will submit the amendment to the 2019-2020 Annual Action Plan to HUD, and resume providing assistance to eligible households through the Emergency Housing Payment Program.

Prepared by: Heidi Crabtree, Housing Program Coordinator

Reviewed by: City Manager 

**RESOLUTION NO. 20-\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS  
AMENDING THE 2019-2020 ANNUAL ACTION PLAN**

**WHEREAS**, the City Council of the City of Clovis is a U. S. Department of Housing and Urban Development (HUD) entitlement city for the purpose of receiving Community Development Block Grant funds; and

**WHEREAS**, Clovis received notification from HUD that the City is receiving an allocation of CDBG-CV3 funds in the amount of \$602,534 to be used to prevent, prepare for and respond to COVID-19; and

**WHEREAS**, HUD requires that grantees follow their adopted Citizen Participation Plan when a substantial change is proposed to the allocation priorities, or a substantial change in the method of distribution of funds for activities, funded in the City’s Annual Action Plan; and that the amendment must be approved before the funds can be utilized.

**NOW, THEREFORE, BE IT RESOLVED** that the Clovis City Council approves an amendment to the 2019-2020 Annual Action Plan to add the CDBG-CV funds and to direct the use of those funds to the Emergency Housing Payment activity.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on the 12th day of October, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: October 12, 2020

\_\_\_\_\_  
Mayor

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

RESOLUTION 20-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS  
APPROVING AN AMENDMENT TO THE FY 2020-2021  
HOUSING AND COMMUNITY DEVELOPMENT BUDGET**

**WHEREAS**, the City Council adopted the FY2020-2021 City budget on June 1, 2020; and

**WHEREAS**, the City of Clovis has an allocation of Community Development Block Grant-CV3 funds in the amount of \$602,534; and

**WHEREAS**, the City of Clovis is allocating the Community Development Block Grant-CV3 funds in the amount of \$602,534 to the Emergency Housing Payment Program; and

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

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

\* \* \* \* \*

The foregoing resolution was approved at the regularly scheduled meeting of the Clovis City Council on the 12<sup>th</sup> day of October, 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated:

\_\_\_\_\_  
Mayor

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

**Attachment 2**



**EXHIBIT A**

**SUMMARY OF EXPENDITURES BY DEPARTMENT**

**HOUSING AND COMMUNITY DEVELOPMENT**

CDBG	<u>\$602,534.00</u>
TOTAL DEPARTMENT	\$602,534.00
<b>TOTAL ALL DEPARTMENTS</b>	<b>\$602,534.00</b>

**SUMMARY OF EXPENDITURES BY FUND**

Housing and Community Development	<u>\$602,534.00</u>
TOTAL DEPARTMENT	\$602,534.00

**SUMMARY OF REVENUES BY DEPARTMENT**

**HOUSING AND COMMUNITY DEVELOPMENT**

Housing and Community Development	<u>\$602,534.00</u>
TOTAL DEPARTMENT	\$602,534.00

**SUMMARY OF REVENUES BY FUND**

Housing and Community Development	<u>\$602,534.00</u>
TOTAL DEPARTMENT	\$602,534.00



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: October 12, 2020

SUBJECT: Consider Introduction - Ord. 20-\_\_\_\_, OA2020-003, an Ordinance of the City Council of the City of Clovis amending Section 9.18.050 and adding Section 9.104.120 of the Clovis Municipal Code relating to the Regional Housing Needs Allocation (To be continued to the October 19, 2020 meeting)

**Staff:** Dave Merchen, City Planner

**Recommendation:** Approve

This item will be continued to the October 19, 2020 Council Meeting.

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



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: October 12, 2020

SUBJECT: Consider Approval – Authorize the City Manager to Execute a Disposition and Development Agreement with Habitat for Humanity Greater Fresno Area for Construction of Affordable Housing at 1403 Fourth Street and 1421 Fourth Street in Clovis’ Stanford Addition.

**Staff:** Heidi Crabtree, Housing Program Coordinator

**Recommendation:** Approve

ATTACHMENTS: 1. Disposition and Development Agreement – 1403 Fourth Street  
2. Disposition and Development Agreement – 1421 Fourth Street

### CONFLICT OF INTEREST

None.

### RECOMMENDATION

Authorize the City Manager to execute the Disposition and Development Agreement with Habitat for Humanity Greater Fresno Area for the construction of affordable housing at 1403 Fourth Street and 1421 Fourth Street in Clovis’ Stanford Addition.

### EXECUTIVE SUMMARY

Clovis recently purchased the lots located at the subject addresses using Redevelopment Bond Housing Set-Aside funds for the purpose of developing affordable housing. Habitat for Humanity Greater Fresno Area approached the City with interest to build two (2) affordable homes on the parcels. The property ownership must be transferred to Habitat for Humanity Greater Fresno Area before construction can begin.

### BACKGROUND

Habitat for Humanity Fresno County approached the City with interest to build affordable single-family homes on the parcels. The Development and Disposition Agreements will provide the land commitment needed to move forward with the construction while ensuring

the City's interest in creating affordable housing units and preservation of assets are protected.

Due to the use of Housing Set-Aside Bond funds to purchase the property, the property can either be sold for fair market value or granted to a developer. It is proposed that the City grant the property to Habitat for Humanity Greater Fresno Area. If they fail to meet the development milestones stated in the agreement, the City has the option to take back the property. In addition, the property will be restricted to provide two (2) units of affordable housing uses for a minimum term of 55 years.

#### **FISCAL IMPACT**

None.

#### **REASON FOR RECOMMENDATION**

This agreement will allow the property ownership to be transferred from the City of Clovis to Habitat for Humanity Fresno County. Once transferred, construction will begin on two (2) single-family homes that will be designated as affordable for a term of 55 years. These units would provide much needed affordable housing in the City.

#### **ACTIONS FOLLOWING APPROVAL**

1. Execute Disposition and Development Agreements with Habitat for Humanity Greater Fresno Area
2. Property will be transferred to Habitat for Humanity Greater Fresno Area.
3. Habitat for Humanity will construct two (2) affordable, single-family homes on the parcels.
4. Disposition and Development Agreements will be monitored to ensure compliance.

Prepared by: Heidi Crabtree, Housing Program Coordinator

Reviewed by: City Manager *JA*

**REAL PROPERTY DISPOSITION AND  
DEVELOPMENT AGREEMENT**

**CITY OF CLOVIS**

**and**

**HABITAT FOR HUMANITY**

**(1403 Fourth Street, APN No. 491-191-18)**

**Attachment 1**

**TABLE OF CONTENTS**

**RECITALS** .....1

**1. Sale of Property**.....1

**2. Reversionary Interest** .....2

**3. Escrow** .....2

    3.1 Opening.....2

    3.2 Escrow Account .....2

    3.3 Developer’s Obligations .....2

    3.4 City’s Obligations .....3

    3.5 Duties of Escrow Agent .....3

    3.6 Cancellation of Escrow .....3

    3.7 Liability of Escrow Agent.....3

    3.8 Conveyance of Title and Delivery of Possession .....4

    3.9 No Broker Fees. ....4

    3.10 Title Report and Permitted Exceptions .....4

    3.11 Title Insurance .....4

    3.12 Representations of City.....5

    3.13 Condition of the Property.....5

**4. Preliminary Work by Developer** .....6

    4.1 License .....6

    4.2 Existing Documents .....6

**5. Reserved**.....6

**6. Development of the Property** .....6

    6.1 Construction Plans and Related Drawings and Documents.....6

    6.2 Changes to Final Plans.....7

    6.3 Progress Meetings.....7

    6.4 Cost of Construction .....7

    6.5 Indemnification and Insurance.....7

    6.6 City and Other Governmental Agency Permits .....7

    6.7 Local, State and Federal Laws .....7

    6.8 Anti-Discrimination During Construction .....7

    6.9 Taxes, Assessments, Encumbrances and Liens .....7

    6.10 Certificate of Occupancy .....8

    6.11 Prohibition Against Transfer of the Property, the Buildings  
    Or Structures Thereon and Assignment of Agreement.....8

**7. Affordable Housing Requirements.....8**  
7.1 Covenants Running with the Land.....8  
7.2 Other Obligations.....9  
7.3 Obligation to Refrain From Discrimination.....9  
7.4 Effect and Duration of Covenants.....9  
7.5 City as Beneficiary of Covenants .....9  
7.6 Developer Acknowledgement of Covenants .....10

**8. Defaults, Remedies and Termination.....10**  
8.1 Defaults – General .....10  
8.2 Legal Actions .....10  
    8.2.1 Institution of Legal Actions .....10  
    8.2.2 Applicable Law .....10  
8.3 Termination.....10  
    8.3.1 Termination by the City Prior to Conveyance .....10  
8.4 Reversionary Interest .....11  
8.5 Remedies.....11

**9. Miscellaneous Provisions.....11**  
9.1 Enforced Delay; Extension of Times of Performance .....11  
9.2 Inspection of Books and Records .....11  
9.3 Integration .....11  
9.4 Interpretation.....11  
9.5 Further Documents and Actions .....12

## **EXHIBITS**

1. Legal Description of the Property
2. Map of the Property
3. Form of Grant Deed to Developer
4. Schedule of Performance
5. Notice of Affordability Restrictions on Transfer of Property
6. Reversionary Interest



## REAL PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT

THIS REAL PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT (“Agreement”) is entered into between the City of Clovis acting as the Housing Successor to the former Clovis Community Development Agency (“City”) and Habitat for Humanity Fresno, Inc., a California nonprofit corporation, DBA Habitat for Humanity Fresno County (“Developer”) with respect to the following recitals, which are a substantive part of this Agreement. The effective date of this Agreement shall be the date the Agreement is executed by City (“Effective Date”).

### RECITALS

- A. City owns the parcel located at 1403 Fourth Street, Clovis, Assessor’s Parcel No. 491-191-18 (“Property”). The Property is legally described in **Exhibit 1**.
- B. City desires to sell the Property to Developer for the purpose of developing the Property for affordable housing in accordance with this Agreement in order to fulfill the intent of the City of Clovis Redevelopment Plans.
- C. Developer is an experienced residential developer, and desires to purchase the Property for the purposes of building affordable housing in accordance with this Agreement and consistent with the Redevelopment Plans.
- D. The sale and development of the Property in accordance with the terms of this Agreement is in the public interest and benefits the health, safety, morals and welfare of the residents of Clovis, and is in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.
- E. The City’s disposition of the Property, and the construction, completion and operation of affordable housing on the Property pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and will serve the public purpose in the City.

NOW, THEREFORE, upon the mutual covenants and consideration provided herein, the Parties agree as follows:

- Sale of Property**. City agrees to sell the Property to Developer for no monetary compensation, but subject to the conditions and requirements set forth herein. Following the transfer of title to the Property to the Developer, Developer shall develop and improve the property as an individual single-family home for sale, which must qualify as affordable housing in conformance with the applicable Redevelopment Plan and subject to the restrictions of this Agreement. The Property is depicted in the map attached as **Exhibit 2**. The City shall convey to Developer fee simple title to the Property free and clear of all recorded liens, encumbrances, assessments, leases, and taxes except as are consistent with this Agreement, subject only to easements of record. The Property shall be sold subject to City’s Grant Deed Containing Covenants, Conditions and Restrictions Governing Use of the Property as set forth in **Exhibit 3**

(“Grant Deed”). The sale of the Property shall be subject to a reversionary interest as set forth in **Section 2**.

**2. Reversionary Interest.** The Grant Deed for the Property shall contain the following restrictions: (1) a restriction that if Developer fails to complete the construction of the housing on the Property within the time period set forth in the Schedule of Performance (**Exhibit 4**), title to the Property shall automatically revert back to City; and (2) a restriction that if Developer fails to cure a breach of this Agreement within thirty (30) days after written notice thereof by City, title to the Property shall automatically revert back to City. This Reversionary Interest shall terminate upon Developer’s sale of the Property to the first owner-occupant, who shall be a Qualified Buyer as set forth in **Section 7**.

If title to the Property reverts back to City in accordance with this Section, City shall be entitled to reenter and take possession of the Property, with all improvements thereon. Any and all buildings and fixtures on the Property shall, without compensation to Developer, become the property of City free and clear of all claims to or against them by Developer, or any third party. These rights are to be interpreted in light of the fact that the City conveyed the Property to Developer without monetary compensation.

**3. Escrow.**

3.1. Opening. Within ten (10) days of the Effective Date, City shall open Escrow with a mutually agreeable escrow company (“Title Company” or “Escrow Agent”) by depositing a copy of this Agreement with Escrow Agent. The Parties shall execute such other supplemental escrow instructions required by Escrow Agent or otherwise necessary to carry out the terms of this Agreement. This Agreement constitutes the joint escrow instructions of City and Developer with respect to conveyance of the Property. The Escrow Agent is hereby empowered to act under this Agreement and shall carry out its duties accordingly.

3.2. Escrow Account. All funds received into Escrow shall be deposited by Escrow Agent in a general escrow account with any state or national bank doing business in the state of California. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a thirty (30) day month.

3.3. Developer’s Obligations. Prior to the close of escrow (“Closing”), Developer shall deliver into Escrow:

- a. All of the costs and fees associated with Escrow.
  - b. The cost of the premium for the title insurance policy or special endorsements for the Property.
  - c. Any taxes or other fees related to the Property after conveyance of title, but which are required to be paid into Escrow.

3.4. City’s Obligations. Prior to Closing, City shall deliver into escrow:

- a. The Grant Deed conveying to Developer title to the Property in substantially the form attached as **Exhibit 3**.
- b. Any costs necessary to place the title to the Property in the condition for conveyance required by the provisions of this Agreement;
- c. Any cost of drawing the Grant Deed;
- d. Any recording and notary fees for executing and recording the Grant Deed;
- e. Any taxes or other fees related to the Property prior to conveyance of title, but which are required to be paid into Escrow; and
- f. Any state, county or City documentary transfer tax.

3.5 Duties of Escrow Agent. The Escrow Agent shall perform the following duties in accordance with this Agreement:

- a. Pay and charge City and Developer, respectively, for any costs and fees payable under this Section 3. Before such payments are made, Escrow Agent shall notify City and Developer of the costs and fees necessary to clear title and close Escrow;
- b. Disburse funds and deliver the Grant Deed and other documents to the parties entitled thereto when the conditions of the Escrow have been fulfilled by City and Developer; and
- c. Record any instruments delivered through Escrow, if necessary or proper, to vest title in Developer in accordance with the terms and provisions of this Agreement.

3.6. Cancellation of Escrow. If the Closing of Escrow does not occur before the time for conveyance established in the Schedule of Performance, Escrow may be canceled by mutual agreement of the Parties or, if one Party has not performed its obligations under this Agreement, individually by a Party who has fully performed the acts required by this Agreement (“Canceling Party”). The Canceling Party shall provide written notice of cancellation to the Escrow Agent. Upon receipt of the notice of cancellation, Escrow Agent shall return all money, papers or documents delivered into Escrow.

3.7. Liability of Escrow Agent. The liability of Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under this Section.

3.8. Conveyance of Title and Delivery of Possession. Conveyance of title to the Property shall be completed on or prior to the dates specified in the Schedule of Performance. City and Developer agree to perform all acts necessary to conveyance of title in sufficient time

for title to be conveyed in accordance with the foregoing provisions. Possession of the Property shall be delivered to Developer concurrently with the conveyance of title thereto.

3.9 No Broker Fees. The Parties represent that they have not engaged any broker, agent or finder in connection with this transaction. Each Party shall bear their own costs, if any, of any real estate commissions or brokerage fees.

3.10 Title Report and Permitted Exceptions. Title Company shall prepare and deliver to City and Developer a current preliminary title report (“Title Report”) for the Property, together with a copy of the documents listed as exceptions therein. As a condition precedent to Developer’s obligations, but not as a covenant of City, City shall convey the Property, and Developer shall accept the Property, subject to the following matters, which are collectively referred to as the “Permitted Exceptions”:

- a. All exceptions to title shown in the Title Report that are approved or deemed approved by Developer;
- b. The lien of non-delinquent real and personal property taxes and assessments;
- c. Local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now existing or hereafter in effect with respect to the Property;
- d. Matters affecting the condition of title created by or with the written consent of Developer;
- e. Water rights, and claims of title to water, whether or not shown by the public records; and
- f. Unless Developer elects to obtain an ALTA policy of title insurance, discrepancies, conflicts in boundary lines, shortages in area, encroachments, and any state of facts which inspection of the Property would disclose and which are not shown by the public records; and standard printed exclusions generally included in a CLTA owner’s policy (or ALTA owner’s policy, as the case may be).

3.11 Title Insurance. Title Company shall provide to Developer a title insurance policy for the Property insuring that title is vested in the Developer in the condition required by this Section and in the amount of the Purchase Price. Title Company shall provide City with a copy of the title insurance policy. Title Company shall, if requested by Developer, provide Developer with an endorsement to insure the amount of Developer’s estimated development costs for the improvements to be constructed upon the Property. Developer shall pay the entire premium for any such increase in coverage requested by it.

3.12 Representations of City. Except as specifically provided, the following constitute representations of City, which shall be true and correct as of the Close of Escrow to the best of City's knowledge:

- a. City has no actual knowledge, without duty of investigation on City's part, of any actions, suits, material claims, including claims based on labor or services performed, tenants' claims or disputes, or legal proceeding affecting the Property.
- b. City has not received any notice from governmental authorities pertaining to violation of law or governmental regulations with respect to the Property.
- c. City has no actual knowledge, without duty of investigation on City's part, of any pending proceeding in eminent domain or otherwise, which would affect the Property.
- d. City has no knowledge of any leases, subleases, occupancies or tenancies pertaining to the Property, which have not been disclosed to Developer. To the best of City's knowledge, no one else has right of possession or other agreements to lease or purchase the Property.
- e. City has no actual knowledge, without duty of investigation, of the presence of underground storage tanks, asbestos, PCBs or any hazardous waste, pollutants or contaminants as defined under any federal, state, or local statute, regulation or ordinance which are or have been released on or under the Property.

3.13 Condition of the Property.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT CITY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING CITY SHALL SELL AND CONVEY TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. DEVELOPER HAS NOT RELIED AND WILL NOT RELY ON, AND CITY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO WITH RESPECT TO THE PROPERTY MADE OR FURNISHED BY CITY OR ANY EMPLOYEES OR AGENTS REPRESENTING OR PURPORTING TO REPRESENT CITY, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS

AGREEMENT. DEVELOPER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD “AS-IS.”

DEVELOPER REPRESENTS TO CITY THAT DEVELOPER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON THE SAME.

**4. Preliminary Work by Developer.**

4.1 License. City grants Developer and its agents permission to access the Property at reasonable times prior to the Close of Escrow to perform testing and preliminary work necessary to carry out this Agreement. Such testing and work shall be done at the sole expense and risk of Developer. Developer shall indemnify, defend and hold the City of Clovis, their officers, employees, volunteers, and agents, harmless against any claims resulting from such testing and work, or from access and use of the Property. Developer shall provide copies of data, surveys and tests obtained or made by Developer on the Property. Any testing or work by Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

4.2 Existing Documents. City shall provide Developer copies of all data and information regarding the Property available to City, but without warranty or representation by City as to the completeness, correctness or validity of such data and information.

**5. Reserved.**

**6. Development of the Property.**

6.1 Construction Plans and Related Drawings and Documents. Developer shall prepare and submit construction plans and related drawings and documents (“Construction Plans”) for the improvements on the Property to City for review and written approval. Developer shall first submit preliminary Construction Plans for City approval. City shall return its comments and Developer shall consider those comments in developing final Construction Plans, which shall include sufficient detail to obtain required construction and building permits from the appropriate governmental agencies. Final Construction Plans shall be submitted to City for approval. Any disapproval shall state in writing the reasons for disapproval and the required change. Upon receipt of a notice of disapproval, Developer shall revise the Construction Plans and resubmit them to City as soon as practicable. Developer may not commence construction until after it has received approval of the final Construction Plans from City.

6.2 Changes to Final Plans. If Developer desires to make any substantial change in the Final Construction Plans after their approval by City, Developer shall submit the proposed change to City for its approval.

6.3 Progress Meetings. During the preparation of Construction Plans, City and Developer staff shall hold regular progress meetings to coordinate the preparation, submission and review of Construction Plans by City.

6.4 Cost of Construction. City and Developer shall pay their own costs related to administration of their respective obligations under this Agreement.

6.5 Indemnification and Insurance. Developer agrees to indemnify, defend, and hold harmless the City of Clovis, and its officers, employees, volunteers, and agents from and against any and all liability, expense (including defense costs and legal fees) and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with this Agreement. Without limiting Developer's obligations under this Section, Developer shall maintain insurance satisfactory to City's Risk Manager covering its activities under this Agreement. If Developer fails to maintain the insurance required by this Agreement, City may immediately terminate this Agreement or elect to procure or renew such insurance at its expense. Developer shall immediately reimburse City for all expenses related to City procuring insurance due to Developer's breach.

6.6 City and Other Governmental Agency Permits. Notwithstanding City's obligation to review and approve Construction Plans, before commencement of construction on the Property, Developer shall, at its own expense, secure all permits required by the City or any other governmental agency for the Development. City shall cooperate with Developer in securing these permits.

6.7 Local, State and Federal Laws. Developer shall carry out construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

6.8 Anti-Discrimination During Construction. Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability as defined in California Government Code section 12955, *et seq.*

6.9 Taxes, Assessments, Encumbrances and Liens. Developer shall pay all real estate taxes and assessments assessed and levied on the Property for any period after conveyance of title to the Property. Prior to the issuance of a Certificate of Occupancy therefor, Developer may not place or allow to be placed on the Property any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. Developer shall remove or have removed any levy or attachment made on the Property, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to

prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto.

6.10 Certificate of Occupancy. Promptly after completion of all construction to be completed by Developer upon the Property, City shall furnish Developer with a Certificate of Occupancy, indicating the satisfactory completion as required by this Agreement. The Certificate of Occupancy may be recorded in the Office of the County Recorder of Fresno County. The City shall not unreasonably withhold any Certificate of Occupancy. Such Certificate of Occupancy is not notice of completion as referred to in California Civil Code section 3093.

6.11 Prohibition Against Transfer of the Property, the Buildings or Structures Thereon and Assignment of Agreement. Prior to City issuing a Certificate of Occupancy for the improvements on the Property, Developer shall not, unless expressly permitted by this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Property or improvements thereon without the prior written approval of City. This is not intended to prohibit the granting of easements or permits to facilitate the development of the Property.

## 7. Affordable Housing Requirements.

7.1 Covenants Running with the Land. Developer agrees that the Property shall be designated affordable housing and the following covenants, in addition to those set forth in the Grant Deed incorporated herein by reference (**Exhibit 3**), shall run with the land:

- a. Construction on the Property shall be a single family residence.
- b. The maximum sale price to the first owner occupant shall not exceed the appraised value of the Property after completion of the improvements by Developer.
- c. After issuance of a Certificate of Occupancy, the Property shall be made available for sale at an affordable housing cost as defined in California Health and Safety Code section 50052.5, to persons and families of low or moderate income (“Qualified Buyer”). Qualified Buyer means a household whose income does not exceed eighty percent (80%) of area-median income, adjusted for family size, as determined by City, pursuant to section 50093 of the California Health and Safety Code. The requirements set forth in the California Community Redevelopment Law, Health and Safety Code § 33000 et seq. shall be followed in selecting a Qualified Buyer. To that end, prior to any sale or transfer of any portion of or any interest in the Property, Developer shall submit to City a request for approval of the proposed transferee. The request shall be accompanied by the following information: (i) the proposed sale price; (ii) the information necessary to determine Buyer’s status as a Qualified Buyer; (iii) details of the first mortgage; and (iv) any other information necessary for City to ensure compliance with the California Community Redevelopment Law. City may reject the proposed transferee if the transferee is not a Qualified Buyer, if the transferee will be spending more than thirty percent (30%) of its gross income for housing, and for a failure to meet any requirement under the California Community Redevelopment Law.



d. SPECIFIC REFERENCE IS MADE TO **EXHIBIT 3**, THE GRANT DEED, FOR COVENANTS PERTAINING TO: RESTRICTIONS ON SUBSEQUENT TRANSFERS OF THE PROPERTY; MAINTENANCE OF THE PROPERTY; CITY OPTION TO DESIGNATE SUBSEQUENT ELIGIBLE PURCHASERS; CITY OPTION TO PURCHASE THE PROPERTY UPON A PROPOSED SUBSEQUENT SALE; DETERMINATION OF MAXIMUM PRICE FOR SUBSEQUENT SALES OF THE PROPERTY; DETERMINATION OF MAXIMUM REFINANCING AMOUNTS; AND OTHER COVENANTS AS SET FORTH IN **EXHIBIT 3**.

7.2 Other Obligations. Developer shall obtain from the owner-occupant of the Property, and deliver to City concurrently with the close of escrow for the sale of the Property, the following documents: (i) Attachment B to the Grant Deed (see **Exhibit 3**) which is the City of Clovis Homeownership Assistance Program Acknowledgment of Restrictive Covenants Governing Use and Resale of the Property Including Option to Designate Eligible Purchasers; and (ii) Notice of Affordability Restrictions on Transfer of Property as set forth in **Exhibit 5**.

7.3 Obligation to Refrain From Discrimination. Developer covenants by and for itself and any successors in interest not to discriminate upon the basis of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof. Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof, nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sublessees, or vendees in the Property.

7.4 Effect and Duration of Covenants. Except as otherwise provided, the covenants contained in this Agreement and the Grant Deed for the Property shall remain in effect in perpetuity. The covenants established in this Agreement and the Grant Deed shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns and any successor in interest to the Property.

7.5 City as Beneficiary of Covenants. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest therein in the Property or in the Redevelopment Plan project areas. City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

7.6 Developer Acknowledgment of Covenants. DEVELOPER ACKNOWLEDGES AND AGREES THAT, AS A RESULT OF THIS AGREEMENT, THE SALE OF THE PROPERTY MAY BE RENDERED MORE DIFFICULT THAN WOULD BE THE CASE ABSENT THE AGREEMENT, THAT WHEN THE PROPERTY IS SOLD, IT IS LIKELY THAT THE AMOUNT RECOVERED BY THE DEVELOPER WILL BE SUBSTANTIALLY LESS THAN WOULD BE RECEIVED ABSENT THE RESTRICTIONS AND LIMITATIONS OF THIS AGREEMENT.

DEVELOPER'S INITIALS \_\_\_\_\_

**8. Defaults, Remedies and Termination.**

8.1 Defaults - General. Upon material breach of this Agreement, the non-defaulting party shall give written notice of default to the other party within thirty (30) days, which notice shall identify the breach and demand a cure. If default is not cured by the defaulting party within thirty (30) days, the noticing party may terminate this Agreement and/or seek remedy pursuant to this Agreement. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8.2 Legal Actions.

8.2.1 Institution of Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Fresno, State of California, or in the appropriate Federal District Court (for Fresno County) in the State of California.

8.2.2 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

8.3 Termination.

8.3.1 Termination by the City Prior to Conveyance. City may terminate this Agreement prior to conveyance of title to the Developer for the following breaches if such breach is not cured within thirty (30) days after written demand by the City:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein related to the Property, or the buildings or improvements thereon in violation of this Agreement; or

b. There is any significant change in the ownership or identity of the Developer;  
or

- c. The Developer does not submit evidence that it has the necessary financing for building on the Property; or
- d. The Developer fails to submit to City the Construction Plans; or
- e. The Developer is in breach or default with respect to any other obligation of the Developer under this Agreement.

8.4 Reversionary Interest. As set forth above in **Section 2**, if Developer fails to complete the construction of the housing on the Property within the time period set forth in the Schedule of Performance (**Exhibit 4**), title to the Property shall automatically revert back to City.

8.5 Remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

**9. Miscellaneous Provisions.**

9.1 Enforced Delay; Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to events or occurrences beyond the control of the party who would be in default such as unusually severe weather or inability to secure necessary labor, materials or tools. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall run from the time of commencement of the cause. Notice by the party claiming such extension shall be sent to the other party within thirty (30) days after the commencement of the cause. If notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the party claiming the extension shall be liable for damages caused for the time period between the commencement of the cause and the providing of notice. Times of performance under this Agreement may also be extended in writing by City and Developer.

9.2 Inspection of Books and Records. City has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement.

9.3 Integration. This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or a contemporaneous oral agreement, nor explained or supplement by evidence of consistent additional terms. Any amendment shall be in writing, subject to approval of both parties.

9.4 Interpretation. Each of the Parties acknowledges and agrees that this Agreement is an accord to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.

9.5 Further Documents and Actions. Each of the Parties agrees to execute such further documents and take such further actions as may be reasonably necessary or appropriate to effectuate the terms of this Agreement.

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(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, City and Developer have signed this Agreement as set forth below.

CITY OF CLOVIS, acting as the Housing  
Successor to the former Clovis Community  
Development Agency

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Luke Serpa, City Manager

“CITY”

HABITAT FOR HUMANITY  
A California nonprofit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Chief Executive Officer

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Board Chairman

“DEVELOPER”

ATTEST:

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

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
David J. Wolfe  
City Attorney

Dated: \_\_\_\_\_

# **EXHIBIT 1**

## **Legal Description of the Property**

### **TO BE INSERTED**

APN: 491-191-18

## **Exhibit 2 – Map of the Property**

**TO BE INSERTED**

# Exhibit 3 Form of Grant Deed

## GRANT DEED

RECORDING REQUESTED BY AND )  
WHEN RECORDED, RETURN TO AND )  
MAIL TAX STATEMENTS TO: )  
 )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)

**GRANT DEED WITH REVERSIONARY INTEREST**

**GRANT DEED CONTAINING COVENANTS, CONDITIONS AND RESTRICTIONS GOVERNING USE AND RESALE OF THE PROPERTY**

**1403 Fourth Street, Clovis, CA 93612, APN No. 491-191-18**

For a valuable consideration, receipt of which is hereby acknowledged,

The City of Clovis, acting as the Housing Successor to the former Clovis Community Development Agency (“Grantor” or “City”), hereby grants to **Habitat for Humanity Fresno, Inc.** (“Grantee” or “Purchaser”) the real property described in **Attachment A** (“Property”) attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record.

Grantor is also conveying the Property to Grantor with a Reversionary Interest in City should Grantee fail to timely complete improvements to the Property.

Grantee understands that one of Grantor’s purposes is to provide affordable housing to residents of the City of Clovis. In order to maintain Grantor’s ability to provide affordable housing, Grantor has agreed to convey the Property subject to, and Grantee has agreed to be bound by, covenants, conditions, and restrictions limiting Grantees right to use and resell the Property by establishing resale, financing, and occupancy restrictions; and by reserving Grantor an option to designate eligible subsequent purchasers.

The Property is conveyed in accordance with and subject to the applicable Redevelopment Plan and pursuant to the Real Property Disposition and Development Agreement entered into between Grantor and Grantee dated \_\_\_\_\_, 2020 (“Agreement”), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference.



NOW, THEREFORE, the following Reversionary Interest and Covenants, Conditions, and Restrictions (“Restrictive Covenants”) shall run with the land:

**I. REVERSIONARY INTEREST.**

1. Failure to Timely Complete Construction. If Grantee fails to complete construction of the residence on the Property within the time period set forth in **Exhibit 4** (Schedule of Performance) of the Agreement, and Grantee fails to obtain an extension of time for the completion of this obligation, title of any and all uncompleted lots shall automatically revert back to City.

2. Failure to Cure Breach of Agreement. If Grantee fails to cure a breach of the Agreement within thirty (30) days after written notice thereof by City, title to the Property shall automatically revert back to City.

3. Effect of Title Reverting to City. If title to the Property reverts back to City, City shall be entitled to reenter and take possession of the Property, with all improvements thereon. Any and all buildings and fixtures on the Property shall, without compensation to Grantee, become the property of City free and clear of all claims to or against them by Grantee, or any third party. These rights are to be interpreted in light of the fact that the City conveyed the Property to Grantee at no cost.

4. Expiration of Reversionary Interest. The Reversionary Interest for the Property shall terminate upon sale of the Property to the first owner occupant as set forth in the Agreement.

**II. RESTRICTIVE COVENANTS.**

1. Real Property Disposition and Development Agreement. The Property is conveyed in accordance with the Agreement.

2. Definition of Purchaser: Acknowledgment and Certification. All subsequent purchasers or successors (“Purchaser”) shall certify his/her acknowledgment of these Restrictive Covenants by executing a form substantially the same as **Attachment B**. The term Purchaser as hereinafter used in these Restrictive Covenants shall mean Grantee and all subsequent Purchasers.

3. Single Family Residence: Residency. Purchaser hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any part thereof, that after construction of the single family home and sale to the first owner occupant as set forth in the Agreement, Purchaser, such successors and such assigns, shall maintain and use the Property only as a single-family residence and that Purchaser will occupy the Property as his/her principal place of residence. Purchaser shall be considered as occupying the Property as a principal place of residence if Purchaser is living on the Property for at least ten (10) months out of each calendar year. The Property may not be subleased or rented.

4. Restrictions on Transfer. Any transfer of the Property after sale to the first owner occupant shall be subject to the provisions of these Restrictive Covenants. Transfer shall mean any voluntary or involuntary sale, assignment or transfer of ownership of the Property or of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred but title is retained by the transferor; except that Transfer shall not mean any of the following:

(a) As to any Purchaser who at the time of the purchase took title to the Property by him/herself but subsequently marries or files a Declaration of Domestic Partnership:

(1) a transfer of the Property without consideration from the Purchaser to the Purchaser and the Purchaser's spouse/domestic partner whereby title to the Property is then held by the Purchaser and Purchaser's spouse/domestic partner; or

(2) a devise or inheritance of the Property to the Purchaser's spouse/domestic partner, whether as a surviving joint tenant or otherwise; or

(3) as part of dissolution of marriage/termination of domestic partnership proceedings, the transfer of the Property from the Purchaser to the Purchaser's spouse/domestic partner provided, however, that the spouse/domestic partner qualifies, at the time of the transfer, as subsequent purchaser under these Restrictive Covenants.

(b) As to any Purchaser(s) who at the time of the purchase took title jointly (whether as joint tenants, tenants in common, as community property, or otherwise):

(1) a devise or inheritance of the Property to the surviving Purchaser; or

(2) as part of dissolution of marriage or other legal proceedings (such as a termination of domestic partnership), the transfer of the Property from one Purchaser to the other Purchaser.

5. Maintenance of Property. Purchaser shall maintain the Property and improvements thereon, including landscaping and yard areas, in good condition and repair, free from the accumulation of debris and waste materials, consistent with community standards and in compliance with all applicable codes, including City of Clovis ordinances. If not so maintained, the City of Clovis may notify Purchaser of such conditions and of a reasonable time to correct the conditions. For landscaping and yard maintenance, a reasonable time shall be considered five (5) days. If the conditions are not corrected within the time provided the City of Clovis may perform the necessary maintenance at the expense of the Purchaser which expense will become a debt due and owing the City of Clovis. If the debt is not paid within ten (10) days of notice, the debt may be placed as a lien on the Property.

5A. Timely Payment of Loans, Taxes, and Assessments. Purchaser shall timely pay, and prior to default, all monetary obligations secured by the Property, including without limitation all loan obligations, property taxes and assessments.

6. Additions and Improvements to Property. After sale to the first owner occupant, Purchaser shall not undertake substantial remodeling or additions to the Property without the advance written approval of City. Capital Improvements in excess of Five Thousand Dollars (\$5,000.00) shall be considered a substantial remodeling or addition. See Section 12 below for a further definition of Capital Improvements.

7. Inspection of Property. Upon City's receipt of a notice of intent to transfer as detailed in Section 9 below, City shall be given the right to enter and to inspect the Property to determine whether any violations of building, plumbing, electric, fire, housing, neighborhood preservation, or other applicable codes exist and whether the Property has been maintained in good condition. City shall notify Purchaser with regard to any noted code violations and maintenance deficiencies (collectively, the "Deficiencies"), and Purchaser shall cure the Deficiencies in a reasonable manner acceptable to the City within sixty (60) days of being notified in writing of the result of the inspections. Should Purchaser fail to cure all the Deficiencies prior to the scheduled date for the close of escrow, at the option of City or an Eligible Purchaser as defined in Section 10 below, escrow may be closed, title passed and money paid to the Purchaser subject to the condition that such funds as are necessary to pay for curing the Deficiencies, based upon written estimates obtained by City, shall be withheld from the money due Purchaser and held by the escrow holder for the purpose of curing the Deficiencies. City and/or the Eligible Purchaser shall cause the Deficiencies to be cured and, upon certification of completion of work by City, the escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to Purchaser.

8. Nondiscrimination. Purchaser agrees for itself and any successor in interest not to discriminate upon the basis of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof. Purchaser covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof, nor shall Purchaser itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sublessees, or vendees in the Property.

9. Notice of Transfer or Refinancing. If after sale to the first owner occupant, Purchaser intends to transfer or to refinance the Property, Purchaser shall promptly notify City in writing of such intent. For purposes of these Restrictive Covenants, refinance includes a home equity loan or similar line of credit by which the Property secures the promissory note for the loan/line of credit. Prior to executing any documents affecting a transfer or refinancing, Purchaser shall send the notice (hereinafter referred to as the "Notice of Intent to Transfer or

Refinance”) by certified mail return receipt requested, to the City Manager, City of Clovis, 1033 Fifth Street, Clovis, California 93612. Purchaser has the right to withdraw the Notice of Intent to Transfer or Refinance prior to the opening of an escrow to purchase the Property or prior to the recording of any financing documents.

10. City’s Option to Designate an Eligible Purchaser. Upon receipt of the Notice of the Intent to Transfer, City shall have the option to designate an Eligible Purchaser, as defined in Section 11 below, to purchase the Property in the manner set forth hereunder. Within thirty (30) days of receipt by City of the Notice of Intent to Transfer, City shall: (1) notify Purchaser of the Maximum Sales Price, as defined in Section 12 herein, to be paid for the Property; (2) inspect the Property as described in Section 7, above; and (3) notify Purchaser regarding whether or not City intends to exercise its option to designate an Eligible Purchaser. The notification to Purchaser regarding the option to designate an eligible Purchaser shall be sent by certified mail return receipt requested. If City exercises this option, it shall cause an escrow to purchase the Property to be opened within thirty (30) days following such notification to Purchaser, and it shall cause the Property to be purchased by its designated Eligible Purchaser within one hundred twenty (120) days following receipt by City of Purchaser’s Notice of Intent to Transfer.

11. Transfer to Eligible Purchaser and City’s Option to Purchase Property. In the event City does not exercise its option to designate an Eligible Purchaser, transfer of the Property by Purchaser must be to an Eligible Purchaser. An Eligible Purchaser shall be defined as:

- (a) The City of Clovis;
- (b) A household with an annual income that does not exceed eighty percent (80%) of the Fresno County Area Median Income based on the applicable household size, as determined by City pursuant to the appropriate State (Department of Housing and Community Development) and Federal (U. S. Department of Housing and Urban Development) publication.

12. Determination of Maximum Sales Price. After sale to the first owner occupant, the amount of money Purchaser may receive for any transfer of the Property shall be called the “Maximum Sales Price.” The Maximum Sales Price shall be calculated as follows:

- (a) The price the first owner occupant paid for the Property.
- (b) The Purchase Price shall be adjusted by the percentage increase or decrease of the median income of a four-person household for the Fresno County Area as published by the California Department of Housing and Community Development, or its successor, from the purchase date to the date of the Notice of Intent to Transfer.
- (c) Added to the Purchase Price shall be the cost of City approved Capital Improvements in Excess of Five Thousand Dollars (\$5,000.00) (“Qualified Capital Improvements”) if within sixty (60) days upon completion of such Qualified Capital Improvements, Purchaser submitted the following to City: (1) an itemized list of the Qualified

Capital Improvements; (2) reliable proof of completion of the Qualified Capital Improvements (as evidenced e.g., by final building permits or certificate of completion); (3) reliable evidence of the cost of the Qualified Capital Improvements (as evidenced e.g., by an itemized invoice or receipt).

(d) Added to the Purchase Price shall also be the reasonable closing costs and marketing expenses as determined periodically by City.

13. Determination of Maximum Refinancing Amount. After sale to the first owner occupant, the maximum amount of any refinancing, shall be ninety percent (90%) of the Maximum Sales Price, whether refinancing is a new first deed of trust, a second (or other) deed of trust, a home equity loan, or similar line of credit by which the Property secures the promissory note for the deed of first/loan/line of credit.

14. Defaults and Remedies. Upon a violation of any of the provisions of these Restrictive Covenants, City shall give written notice to Purchaser by certified mail return receipt requested, specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as City determines is necessary to correct the violation, City may declare a default under these Restrictive Covenants. Upon declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the obligations of these Restrictive Covenants, for an injunction prohibiting a proposed transfer in violation of these Restrictive Covenants, for a declaration that a transfer in violation of the provisions of these Restrictive Covenants is void, or for any such other relief at law or in equity as may be appropriate. In the event of default by Purchaser, and/or by Purchaser's transferee in those circumstances where a transfer has occurred in violation of these Restrictive Covenants, Purchaser and/or the Purchaser's transferee shall hold the City and the Owner and their respective employees or other agents harmless and reimburse the expenses, legal fees and costs for any action the City takes in enforcing the provisions of these Restrictive Covenants.

15. City's Option to Purchase Upon Default. In addition to the remedies provided City in Section 14 above, City has the option to purchase the Property effective upon the declaration of a default. City option to purchase may be exercised upon a default under these Restrictive Covenants. City shall have sixty (60) days after a default is declared to notify Purchaser of its decision to exercise its option to purchase.

16. Non-liability of City. In no event shall City become in any way liable or obligated to Purchaser or to any successor-in-interest of the Purchaser by reason of its option to purchase under either Section 11 or Section 15 herein nor shall City be in any way obligated or liable to the Purchaser or any successor-in-interest of the Purchaser for City's failure to exercise such option to purchase.

17. Invalid Provisions. If any one or more of the provisions contained in these Restrictive Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect then such provision or provisions shall be deemed severable from the remaining

provisions contained in these Restrictive Covenants, and these Restrictive Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. Controlling Law. The terms of these Restrictive Covenants shall be interpreted under the laws of the State of California.

19. Notices. All notices required herein shall be sent to the City by certified mail return receipt requested, as follows:

City Manager  
City of Clovis  
1033 Fifth Street  
Clovis, CA 93612

or such other address that the City may subsequently request in writing. Notices to the Purchaser shall be sent by certified mail return receipt requested to the Property address.

20. Interpretation of Restriction Covenants. The terms of these Restrictive Covenants shall be interpreted to encourage to the extent possible that the purchase price of and mortgage payments for the Property remain affordable to moderate, low, very low, extremely low income households.

21. Consent of City to Change terms. No changes may be made to these Restrictive Covenants without the written consent of City. City shall be considered a third party beneficiary to these restrictive Covenants.

IN WITNESS WHEREOF, the Grantor/City and Grantee/Purchaser have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF CLOVIS, acting as the Housing Successor to the former Clovis Community Development Agency

By: \_\_\_\_\_  
Luke Serpa, City Manager

ATTEST:

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

*[Additional Signatures on Next Page]*

APPROVED AS TO FORM:

LOZANO SMITH

By: \_\_\_\_\_  
David Wolfe  
City Attorney

THE GRANTEE/PURCHASER AGREES TO BE BOUND BY  
THE COVENANTS SET FORTH ABOVE.

Dated: \_\_\_\_\_, 2020. By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020. By: \_\_\_\_\_

**EXHIBIT 3**  
**GRANT DEED**  
**ATTACHMENT A**  
**Legal Description of the Property**  
**TO BE INSERTED**



**EXHIBIT 3  
GRANT DEED  
ATTACHMENT B**

**CITY OF CLOVIS HOMEOWNERSHIP ASSISTANCE PROGRAM  
ACKNOWLEDGMENT OF RESTRICTIVE COVENANTS  
GOVERNING USE AND RESALE OF THE PROPERTY INCLUDING  
OPTION TO DESIGNATE ELIGIBLE PURCHASERS**

The undersigned acknowledges as follows:

1. I/We am/are purchasing the Property at 1403 Fourth Street, Clovis, CA 93612, designated as Assessor’s Parcel Number 491-191-18.
2. There is recorded against this Property Restrictive Covenants which limit the use and resale of the Property and allow City to designate eligible purchasers. These Restrictive Covenants run with the land for perpetuity.
3. I/We meet the current requirements established by the City in order to be deemed an “Eligible Purchaser” as defined in Section 10 of the Restrictive Covenants.
4. I/We have read and fully understand these Restrictive Covenants and understand that this, in part, sets forth limitations regarding the transfer of the Property; establishes a maximum sales price for which the Property may be resold based on adjustments to the medium income of a four-person household for the Fresno County area as published by the California Department of Housing and Community Development; establishes the maximum amount for which the Property may be refinanced and establishes a definition of an Eligible Purchaser.
5. I/We have had the opportunity to ask City staff any questions I/we have about the document.
6. The original sales price paid for the Property is \$\_\_\_\_\_. The current area median income for a family of four for the Fresno County area is \$\_\_\_\_\_.
7. I/We understand that this document runs with the land and is binding on us when we decide to transfer or refinance the Property, and we agree to comply fully with its terms.

OWNERS:

Dated: \_\_\_\_\_

Signature:\_\_\_\_\_

Dated: \_\_\_\_\_

Signature:\_\_\_\_\_

## Exhibit 4 Schedule of Performance

<u>Action</u>	<u>Date</u>
1. <u>Close of Escrow</u> . City shall convey title to the escrowed Property to Developer, and Developer shall accept such conveyance.	Not later than sixty (60) days after the opening of escrow.
2. <u>Commencement of Construction of Residence on Property</u> . Developer shall obtain the required permits and commence construction of the residence on the Property.	Not later than two (2) years after the close of escrow.
3. <u>Completion of Construction of Residence on Property</u> . Developer shall complete construction of the residence on the Property.	Developer shall complete construction of the residence on the Property during the three (3) years following execution of the Agreement. Developer may apply for and receive up to two (2) separate one (1) year extensions from the City to complete construction of the residence.

# Exhibit 5

## Notice of Affordability Restrictions on Transfer of Property

RECORDING REQUESTED BY, AND )  
 WHEN RECORDED, MAIL TO: )  
 )  
 City of Clovis )  
 1033 Fifth Street )  
 Clovis, California 93612 )  
 ATTN: City Manager ) (Space above provided for Recorder)

---

### NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

**1403 Fourth Street, Clovis, CA 93612, APN No. 491-191-18**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (“Affordability Restrictions”) is recorded in association with the Grant Deed in which the City of Clovis, acting as the Housing Successor to the former Clovis Community Development Agency (“Grantor” or “City”) acting to carry out a City of Clovis Redevelopment Plan under the Community Redevelopment Law of California, grants to [NAME], [RELATIONSHIP] (“Grantee” or “Purchaser”) the real property described in **Attachment A** (“Property”) attached hereto and incorporated herein.

THESE AFFORDABILITY RESTRICTIONS are recorded as required by California Community Redevelopment Law (Health and Safety Code section 33334.3,) and sets forth the following information with respect to the Property:

- A description of the Affordability Restrictions;
- The expiration date of Affordability Restrictions;
- The street address of the Property;
- The Assessor’s Parcel Number of the Property; and,

A legal description of the Property.

### **Restrictive Covenants**

The Grantor's/City's Grant of the subject Property to the Grantee/ Purchaser is being made pursuant to certain Affordability restrictions and other covenants as set forth in the Real Property Disposition and Development Agreement entered into between Grantor and Grantee dated \_\_\_\_\_, 2020 (the "Agreement"), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference.

A complete list of the Affordability Restrictions and other restrictive covenants that run with the Property are set forth in the Agreement. The Affordability Restrictions set forth herein are not intended to be, and shall not be interpreted as, a full and complete recitation of the covenants set forth in the Agreement. The covenants set forth herein are provided strictly for the purpose of placing persons and entities on notice of the existence of certain restrictions and covenants that directly affect any transfer or refinance of the Property.

1. Notice of Transfer or Refinancing. In the event Purchaser intends to transfer or to refinance the Property, Purchaser is required to notify City in writing of such intent, as specified in Paragraph 9 of the subject Grant Deed, prior to executing any documents affecting a transfer or refinance.
  
2. City's Option to Designate an Eligible Purchaser. Upon receipt of the Notice of the Intent to Transfer, City shall have the option to designate an Eligible Purchaser to purchase the Property as specified in Paragraph 10 of the subject Grant Deed.
  
3. Transfer to Eligible Purchaser and City's Option to Purchase Property. In the event City does not exercise its option to designate an Eligible Purchaser, transfer of the Property by Purchaser must be to an Eligible Purchaser. An Eligible Purchaser shall be defined as:
  - (A) The City of Clovis;
  
  - (B) A household with an annual income that does not exceed eighty percent (80%) of the Fresno County Area Median Income

based on the applicable household size, as determined by City pursuant to the appropriate State (Department of Housing and Community Development) and Federal (U. S. Department of Housing and Urban Development) publication.

4. Maximum Sales Price. The amount of money Purchaser may receive for any transfer of the Property shall be called the “Maximum Sales Price.” The Maximum Sales Price shall be calculated as follows:

(A) The price Purchaser paid for the Property, which at the time of document recording is \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00).

*[To be set at the time of first subsequent sale per the Agreement.]*

(B) The Purchase Price shall be adjusted by the percentage increase or decrease of the median income of a four-person household for the Fresno County Area as published by the California Department of Housing and Community Development, or its successor, from the purchase date to the date of the Notice of Intent to Transfer. At the time of document recording, the Fresno County median income for a family of four is \$\_\_\_\_\_.

(C) Added to the Purchase Price shall be the cost of City approved Capital Improvements in Excess of Five Thousand Dollars (\$5,000.00) (“Qualified Capital Improvements”) if within sixty (60) days upon completion of such Qualified Capital Improvements, Purchaser submitted the following to City: (1) an itemized list of the Qualified Capital Improvements; (2) reliable proof of completion of the Qualified Capital Improvements (as evidenced e.g., by final building permits or certificate of completion); (3) reliable evidence of the cost of the Qualified Capital Improvements (as evidenced e.g., by an itemized invoice or receipt).

(D) Added to the Purchase Price shall also be the reasonable closing costs and marketing expenses as determined periodically by City.

5. Maximum Refinancing Amount. The maximum amount of any refinancing, shall be ninety percent (90%) of the Maximum Sales Price, whether refinancing is a new first deed of trust, a second (or other) deed of

trust, a home equity loan, or similar line of credit by which the Property secures the promissory note for the deed of first/loan/line of credit.

**Date of Expiration of Affordability Restrictions**

The Affordability Restrictions as set forth hereinabove are effective for not less than fifty-five (55) years from the date of the transfer of Property.

**Street Address of Property**

The street address of the Property subject to the Affordability Restrictions as set forth hereinabove is 1403 Fourth Street, Clovis, CA 93612.

**Assessor’s Parcel Number of Property**

The Assessor’s Parcel Number (APN) for the Property subject to the Affordability Restrictions as set forth hereinabove is 491-191-18.

**Legal Description of Property**

The legal description of the Property which is subject to the Affordability Restrictions is described in **Attachment 1** (“Property”) hereto and incorporated herein.

IN WITNESS WHEREOF, the Grantor/City and Grantee/Purchaser have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF CLOVIS, acting as the Housing Successor to the former Clovis Community Development Agency

By: \_\_\_\_\_  
Luke Serpa, City Manager

ATTEST:

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

APPROVED AS TO FORM:

LOZANO SMITH

By: \_\_\_\_\_  
David Wolfe  
City Attorney

THE GRANTEE/PURCHASER AGREES TO BE BOUND BY THE  
COVENANTS SET FORTH ABOVE.

Dated: \_\_\_\_\_, 2020.                      By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020.                      By: \_\_\_\_\_

**NOTICE OF AFFORDABILITY  
RESTRICTIONS ON TRANSFER OF TITLE**

**ATTACHMENT A**

**Legal Description of the Property**

**TO BE INSERTED**



# Exhibit 6

## Reversionary Interest Notice

RECORDING REQUESTED BY AND )  
WHEN RECORDED, RETURN TO AND )  
MAIL TAX STATEMENTS TO: )  
)  
City of Clovis )  
1033 Fifth Street )  
Clovis, CA 93612 )

---

### NOTICE OF REVERSIONARY INTEREST

#### 1403 Fourth Street, Clovis, CA 93612, APN No. 491-191-18

WHEREAS, the CITY OF CLOVIS, acting as the Housing Successor to the former Clovis Community Development Agency (“City”) and Habitat for Humanity, a California nonprofit corporation (“Developer”), entered into a Real Property Disposition and Development Agreement (“Agreement”) dated \_\_\_\_\_, 2020 in connection with the sale of certain real property to Developer at 1403 Fourth Street, in the City of Clovis (“Property”).

WHEREAS, pursuant to Sections 2 and 8.4 of the Agreement, Developer failed to complete certain Improvements by specified dates or otherwise failed to timely cure a breach of the Agreement, and therefore Title to the identified Property has reverted back to City.

NOW, THEREFORE, City does hereby give notice that Title has reverted to City for the identified Property and City intends to exercise all rights to the Property.

IN WITNESS WHEREOF, the City has duly executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF CLOVIS, acting as the Housing Successor  
to the former Clovis Community Development Agency

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

**REAL PROPERTY DISPOSITION AND  
DEVELOPMENT AGREEMENT**

**CITY OF CLOVIS**

**and**

**HABITAT FOR HUMANITY**

**(1421 Fourth Street, APN No. 491-191-17)**

**Attachment 2**

**TABLE OF CONTENTS**

**RECITALS** .....1

**1. Sale of Property**.....1

**2. Reversionary Interest** .....2

**3. Escrow** .....2

    3.1 Opening.....2

    3.2 Escrow Account.....2

    3.3 Developer’s Obligations .....2

    3.4 City’s Obligations .....3

    3.5 Duties of Escrow Agent.....3

    3.6 Cancellation of Escrow.....3

    3.7 Liability of Escrow Agent.....3

    3.8 Conveyance of Title and Delivery of Possession .....4

    3.9 No Broker Fees. ....4

    3.10 Title Report and Permitted Exceptions .....4

    3.11 Title Insurance .....4

    3.12 Representations of City.....5

    3.13 Condition of the Property.....5

**4. Preliminary Work by Developer** .....6

    4.1 License .....6

    4.2 Existing Documents .....6

**5. Reserved**.....6

**6. Development of the Property** .....6

    6.1 Construction Plans and Related Drawings and Documents.....6

    6.2 Changes to Final Plans.....7

    6.3 Progress Meetings.....7

    6.4 Cost of Construction .....7

    6.5 Indemnification and Insurance.....7

    6.6 City and Other Governmental Agency Permits .....7

    6.7 Local, State and Federal Laws .....7

    6.8 Anti-Discrimination During Construction .....7

    6.9 Taxes, Assessments, Encumbrances and Liens .....7

    6.10 Certificate of Occupancy .....8

    6.11 Prohibition Against Transfer of the Property, the Buildings  
         Or Structures Thereon and Assignment of Agreement.....8

**7. Affordable Housing Requirements.....8**  
7.1 Covenants Running with the Land.....8  
7.2 Other Obligations.....9  
7.3 Obligation to Refrain From Discrimination.....9  
7.4 Effect and Duration of Covenants.....9  
7.5 City as Beneficiary of Covenants .....9  
7.6 Developer Acknowledgement of Covenants .....10

**8. Defaults, Remedies and Termination.....10**  
8.1 Defaults – General .....10  
8.2 Legal Actions .....10  
    8.2.1 Institution of Legal Actions .....10  
    8.2.2 Applicable Law .....10  
8.3 Termination.....10  
    8.3.1 Termination by the City Prior to Conveyance .....10  
8.4 Reversionary Interest .....11  
8.5 Remedies.....11

**9. Miscellaneous Provisions.....11**  
9.1 Enforced Delay; Extension of Times of Performance .....11  
9.2 Inspection of Books and Records .....11  
9.3 Integration .....11  
9.4 Interpretation.....11  
9.5 Further Documents and Actions .....12

## **EXHIBITS**

1. Legal Description of the Property
2. Map of the Property
3. Form of Grant Deed to Developer
4. Schedule of Performance
5. Notice of Affordability Restrictions on Transfer of Property
6. Reversionary Interest

## REAL PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT

THIS REAL PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT (“Agreement”) is entered into between the City of Clovis acting as the Housing Successor to the former Clovis Community Development Agency (“City”) and Habitat for Humanity Fresno, Inc., a California nonprofit corporation, DBA Habitat for Humanity Fresno County (“Developer”) with respect to the following recitals, which are a substantive part of this Agreement. The effective date of this Agreement shall be the date the Agreement is executed by City (“Effective Date”).

### RECITALS

- A. City owns the parcel located at 1421 Fourth Street, Clovis, Assessor’s Parcel No. 491-191-17 (“Property”). The Property is legally described in **Exhibit 1**.
- B. City desires to sell the Property to Developer for the purpose of developing the Property for affordable housing in accordance with this Agreement in order to fulfill the intent of the City of Clovis Redevelopment Plans.
- C. Developer is an experienced residential developer, and desires to purchase the Property for the purposes of building affordable housing in accordance with this Agreement and consistent with the Redevelopment Plans.
- D. The sale and development of the Property in accordance with the terms of this Agreement is in the public interest and benefits the health, safety, morals and welfare of the residents of Clovis, and is in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.
- E. The City’s disposition of the Property, and the construction, completion and operation of affordable housing on the Property pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and will serve the public purpose in the City.

NOW, THEREFORE, upon the mutual covenants and consideration provided herein, the Parties agree as follows:

1. **Sale of Property**. City agrees to sell the Property to Developer for no monetary compensation, but subject to the conditions and requirements set forth herein. Following the transfer of title to the Property to the Developer, Developer shall develop and improve the property as an individual single-family home for sale, which must qualify as affordable housing in conformance with the applicable Redevelopment Plan and subject to the restrictions of this Agreement. The Property is depicted in the map attached as **Exhibit 2**. The City shall convey to Developer fee simple title to the Property free and clear of all recorded liens, encumbrances, assessments, leases, and taxes except as are consistent with this Agreement, subject only to easements of record. The Property shall be sold subject to City’s Grant Deed Containing Covenants, Conditions and Restrictions Governing Use of the Property as set forth in **Exhibit 3**

(“Grant Deed”). The sale of the Property shall be subject to a reversionary interest as set forth in **Section 2**.

**2. Reversionary Interest.** The Grant Deed for the Property shall contain the following restrictions: (1) a restriction that if Developer fails to complete the construction of the housing on the Property within the time period set forth in the Schedule of Performance (**Exhibit 4**), title to the Property shall automatically revert back to City; and (2) a restriction that if Developer fails to cure a breach of this Agreement within thirty (30) days after written notice thereof by City, title to the Property shall automatically revert back to City. This Reversionary Interest shall terminate upon Developer’s sale of the Property to the first owner-occupant, who shall be a Qualified Buyer as set forth in **Section 7**.

If title to the Property reverts back to City in accordance with this Section, City shall be entitled to reenter and take possession of the Property, with all improvements thereon. Any and all buildings and fixtures on the Property shall, without compensation to Developer, become the property of City free and clear of all claims to or against them by Developer, or any third party. These rights are to be interpreted in light of the fact that the City conveyed the Property to Developer without monetary compensation.

**3. Escrow.**

3.1. Opening. Within ten (10) days of the Effective Date, City shall open Escrow with a mutually agreeable escrow company (“Title Company” or “Escrow Agent”) by depositing a copy of this Agreement with Escrow Agent. The Parties shall execute such other supplemental escrow instructions required by Escrow Agent or otherwise necessary to carry out the terms of this Agreement. This Agreement constitutes the joint escrow instructions of City and Developer with respect to conveyance of the Property. The Escrow Agent is hereby empowered to act under this Agreement and shall carry out its duties accordingly.

3.2. Escrow Account. All funds received into Escrow shall be deposited by Escrow Agent in a general escrow account with any state or national bank doing business in the state of California. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a thirty (30) day month.

3.3. Developer’s Obligations. Prior to the close of escrow (“Closing”), Developer shall deliver into Escrow:

- a. All of the costs and fees associated with Escrow.
  - b. The cost of the premium for the title insurance policy or special endorsements for the Property.
  - c. Any taxes or other fees related to the Property after conveyance of title, but which are required to be paid into Escrow.

3.4 City's Obligations. Prior to Closing, City shall deliver into escrow:

- a. The Grant Deed conveying to Developer title to the Property in substantially the form attached as **Exhibit 3**.
  - b. Any costs necessary to place the title to the Property in the condition for conveyance required by the provisions of this Agreement;
  - c. Any cost of drawing the Grant Deed;
  - d. Any recording and notary fees for executing and recording the Grant Deed;
  - e. Any taxes or other fees related to the Property prior to conveyance of title, but which are required to be paid into Escrow; and
- f. Any state, county or City documentary transfer tax.

3.5 Duties of Escrow Agent. The Escrow Agent shall perform the following duties in accordance with this Agreement:

- a. Pay and charge City and Developer, respectively, for any costs and fees payable under this Section 3. Before such payments are made, Escrow Agent shall notify City and Developer of the costs and fees necessary to clear title and close Escrow;
- b. Disburse funds and deliver the Grant Deed and other documents to the parties entitled thereto when the conditions of the Escrow have been fulfilled by City and Developer; and
- c. Record any instruments delivered through Escrow, if necessary or proper, to vest title in Developer in accordance with the terms and provisions of this Agreement.

3.6. Cancellation of Escrow. If the Closing of Escrow does not occur before the time for conveyance established in the Schedule of Performance, Escrow may be canceled by mutual agreement of the Parties or, if one Party has not performed its obligations under this Agreement, individually by a Party who has fully performed the acts required by this Agreement ("Canceling Party"). The Canceling Party shall provide written notice of cancellation to the Escrow Agent. Upon receipt of the notice of cancellation, Escrow Agent shall return all money, papers or documents delivered into Escrow.

3.7. Liability of Escrow Agent. The liability of Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under this Section.

3.8. Conveyance of Title and Delivery of Possession. Conveyance of title to the Property shall be completed on or prior to the dates specified in the Schedule of Performance. City and Developer agree to perform all acts necessary to conveyance of title in sufficient time



for title to be conveyed in accordance with the foregoing provisions. Possession of the Property shall be delivered to Developer concurrently with the conveyance of title thereto.

3.9 No Broker Fees. The Parties represent that they have not engaged any broker, agent or finder in connection with this transaction. Each Party shall bear their own costs, if any, of any real estate commissions or brokerage fees.

3.10 Title Report and Permitted Exceptions. Title Company shall prepare and deliver to City and Developer a current preliminary title report (“Title Report”) for the Property, together with a copy of the documents listed as exceptions therein. As a condition precedent to Developer’s obligations, but not as a covenant of City, City shall convey the Property, and Developer shall accept the Property, subject to the following matters, which are collectively referred to as the “Permitted Exceptions”:

- a. All exceptions to title shown in the Title Report that are approved or deemed approved by Developer;
- b. The lien of non-delinquent real and personal property taxes and assessments;
- c. Local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now existing or hereafter in effect with respect to the Property;
- d. Matters affecting the condition of title created by or with the written consent of Developer;
- e. Water rights, and claims of title to water, whether or not shown by the public records; and
- f. Unless Developer elects to obtain an ALTA policy of title insurance, discrepancies, conflicts in boundary lines, shortages in area, encroachments, and any state of facts which inspection of the Property would disclose and which are not shown by the public records; and standard printed exclusions generally included in a CLTA owner’s policy (or ALTA owner’s policy, as the case may be).

3.11 Title Insurance. Title Company shall provide to Developer a title insurance policy for the Property insuring that title is vested in the Developer in the condition required by this Section and in the amount of the Purchase Price. Title Company shall provide City with a copy of the title insurance policy. Title Company shall, if requested by Developer, provide Developer with an endorsement to insure the amount of Developer’s estimated development costs for the improvements to be constructed upon the Property. Developer shall pay the entire premium for any such increase in coverage requested by it.

3.12 Representations of City. Except as specifically provided, the following constitute representations of City, which shall be true and correct as of the Close of Escrow to the best of City's knowledge:

- a. City has no actual knowledge, without duty of investigation on City's part, of any actions, suits, material claims, including claims based on labor or services performed, tenants' claims or disputes, or legal proceeding affecting the Property.
- b. City has not received any notice from governmental authorities pertaining to violation of law or governmental regulations with respect to the Property.
- c. City has no actual knowledge, without duty of investigation on City's part, of any pending proceeding in eminent domain or otherwise, which would affect the Property.
- d. City has no knowledge of any leases, subleases, occupancies or tenancies pertaining to the Property, which have not been disclosed to Developer. To the best of City's knowledge, no one else has right of possession or other agreements to lease or purchase the Property.
- e. City has no actual knowledge, without duty of investigation, of the presence of underground storage tanks, asbestos, PCBs or any hazardous waste, pollutants or contaminants as defined under any federal, state, or local statute, regulation or ordinance which are or have been released on or under the Property.

3.13 Condition of the Property.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT CITY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING CITY SHALL SELL AND CONVEY TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. DEVELOPER HAS NOT RELIED AND WILL NOT RELY ON, AND CITY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO WITH RESPECT TO THE PROPERTY MADE OR FURNISHED BY CITY OR ANY EMPLOYEES OR AGENTS REPRESENTING OR PURPORTING TO REPRESENT CITY, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS

AGREEMENT. DEVELOPER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD “AS-IS.”

DEVELOPER REPRESENTS TO CITY THAT DEVELOPER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON THE SAME.

**4. Preliminary Work by Developer.**

4.1 License. City grants Developer and its agents permission to access the Property at reasonable times prior to the Close of Escrow to perform testing and preliminary work necessary to carry out this Agreement. Such testing and work shall be done at the sole expense and risk of Developer. Developer shall indemnify, defend and hold the City of Clovis, their officers, employees, volunteers, and agents, harmless against any claims resulting from such testing and work, or from access and use of the Property. Developer shall provide copies of data, surveys and tests obtained or made by Developer on the Property. Any testing or work by Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

4.2 Existing Documents. City shall provide Developer copies of all data and information regarding the Property available to City, but without warranty or representation by City as to the completeness, correctness or validity of such data and information.

**5. Reserved.**

**6. Development of the Property.**

6.1 Construction Plans and Related Drawings and Documents. Developer shall prepare and submit construction plans and related drawings and documents (“Construction Plans”) for the improvements on the Property to City for review and written approval. Developer shall first submit preliminary Construction Plans for City approval. City shall return its comments and Developer shall consider those comments in developing final Construction Plans, which shall include sufficient detail to obtain required construction and building permits from the appropriate governmental agencies. Final Construction Plans shall be submitted to City for approval. Any disapproval shall state in writing the reasons for disapproval and the required change. Upon receipt of a notice of disapproval, Developer shall revise the Construction Plans and resubmit them to City as soon as practicable. Developer may not commence construction until after it has received approval of the final Construction Plans from City.

6.2 Changes to Final Plans. If Developer desires to make any substantial change in the Final Construction Plans after their approval by City, Developer shall submit the proposed change to City for its approval.

6.3 Progress Meetings. During the preparation of Construction Plans, City and Developer staff shall hold regular progress meetings to coordinate the preparation, submission and review of Construction Plans by City.

6.4 Cost of Construction. City and Developer shall pay their own costs related to administration of their respective obligations under this Agreement.

6.5 Indemnification and Insurance. Developer agrees to indemnify, defend, and hold harmless the City of Clovis, and its officers, employees, volunteers, and agents from and against any and all liability, expense (including defense costs and legal fees) and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with this Agreement. Without limiting Developer's obligations under this Section, Developer shall maintain insurance satisfactory to City's Risk Manager covering its activities under this Agreement. If Developer fails to maintain the insurance required by this Agreement, City may immediately terminate this Agreement or elect to procure or renew such insurance at its expense. Developer shall immediately reimburse City for all expenses related to City procuring insurance due to Developer's breach.

6.6 City and Other Governmental Agency Permits. Notwithstanding City's obligation to review and approve Construction Plans, before commencement of construction on the Property, Developer shall, at its own expense, secure all permits required by the City or any other governmental agency for the Development. City shall cooperate with Developer in securing these permits.

6.7 Local, State and Federal Laws. Developer shall carry out construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

6.8 Anti-Discrimination During Construction. Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability as defined in California Government Code section 12955, *et seq.*

6.9 Taxes, Assessments, Encumbrances and Liens. Developer shall pay all real estate taxes and assessments assessed and levied on the Property for any period after conveyance of title to the Property. Prior to the issuance of a Certificate of Occupancy therefor, Developer may not place or allow to be placed on the Property any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. Developer shall remove or have removed any levy or attachment made on the Property, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to

prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto.

6.10 Certificate of Occupancy. Promptly after completion of all construction to be completed by Developer upon the Property, City shall furnish Developer with a Certificate of Occupancy, indicating the satisfactory completion as required by this Agreement. The Certificate of Occupancy may be recorded in the Office of the County Recorder of Fresno County. The City shall not unreasonably withhold any Certificate of Occupancy. Such Certificate of Occupancy is not notice of completion as referred to in California Civil Code section 3093.

6.11 Prohibition Against Transfer of the Property, the Buildings or Structures Thereon and Assignment of Agreement. Prior to City issuing a Certificate of Occupancy for the improvements on the Property, Developer shall not, unless expressly permitted by this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Property or improvements thereon without the prior written approval of City. This is not intended to prohibit the granting of easements or permits to facilitate the development of the Property.

## 7. Affordable Housing Requirements.

7.1 Covenants Running with the Land. Developer agrees that the Property shall be designated affordable housing and the following covenants, in addition to those set forth in the Grant Deed incorporated herein by reference (**Exhibit 3**), shall run with the land:

- a. Construction on the Property shall be a single family residence.
- b. The maximum sale price to the first owner occupant shall not exceed the appraised value of the Property after completion of the improvements by Developer.
- c. After issuance of a Certificate of Occupancy, the Property shall be made available for sale at an affordable housing cost as defined in California Health and Safety Code section 50052.5, to persons and families of low or moderate income (“Qualified Buyer”). Qualified Buyer means a household whose income does not exceed eighty percent (80%) of area-median income, adjusted for family size, as determined by City, pursuant to section 50093 of the California Health and Safety Code. The requirements set forth in the California Community Redevelopment Law, Health and Safety Code § 33000 et seq. shall be followed in selecting a Qualified Buyer. To that end, prior to any sale or transfer of any portion of or any interest in the Property, Developer shall submit to City a request for approval of the proposed transferee. The request shall be accompanied by the following information: (i) the proposed sale price; (ii) the information necessary to determine Buyer’s status as a Qualified Buyer; (iii) details of the first mortgage; and (iv) any other information necessary for City to ensure compliance with the California Community Redevelopment Law. City may reject the proposed transferee if the transferee is not a Qualified Buyer, if the transferee will be spending more than thirty percent (30%) of its gross income for housing, and for a failure to meet any requirement under the California Community Redevelopment Law.

d. SPECIFIC REFERENCE IS MADE TO **EXHIBIT 3**, THE GRANT DEED, FOR COVENANTS PERTAINING TO: RESTRICTIONS ON SUBSEQUENT TRANSFERS OF THE PROPERTY; MAINTENANCE OF THE PROPERTY; CITY OPTION TO DESIGNATE SUBSEQUENT ELIGIBLE PURCHASERS; CITY OPTION TO PURCHASE THE PROPERTY UPON A PROPOSED SUBSEQUENT SALE; DETERMINATION OF MAXIMUM PRICE FOR SUBSEQUENT SALES OF THE PROPERTY; DETERMINATION OF MAXIMUM REFINANCING AMOUNTS; AND OTHER COVENANTS AS SET FORTH IN **EXHIBIT 3**.

7.2 Other Obligations. Developer shall obtain from the owner-occupant of the Property, and deliver to City concurrently with the close of escrow for the sale of the Property, the following documents: (i) Attachment B to the Grant Deed (see **Exhibit 3**) which is the City of Clovis Homeownership Assistance Program Acknowledgment of Restrictive Covenants Governing Use and Resale of the Property Including Option to Designate Eligible Purchasers; and (ii) Notice of Affordability Restrictions on Transfer of Property as set forth in **Exhibit 5**.

7.3 Obligation to Refrain From Discrimination. Developer covenants by and for itself and any successors in interest not to discriminate upon the basis of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof. Developer covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof, nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sublessees, or vendees in the Property.

7.4 Effect and Duration of Covenants. Except as otherwise provided, the covenants contained in this Agreement and the Grant Deed for the Property shall remain in effect in perpetuity. The covenants established in this Agreement and the Grant Deed shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns and any successor in interest to the Property.

7.5 City as Beneficiary of Covenants. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest therein in the Property or in the Redevelopment Plan project areas. City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

7.6 Developer Acknowledgment of Covenants. DEVELOPER ACKNOWLEDGES AND AGREES THAT, AS A RESULT OF THIS AGREEMENT, THE SALE OF THE PROPERTY MAY BE RENDERED MORE DIFFICULT THAN WOULD BE THE CASE ABSENT THE AGREEMENT, THAT WHEN THE PROPERTY IS SOLD, IT IS LIKELY THAT THE AMOUNT RECOVERED BY THE DEVELOPER WILL BE SUBSTANTIALLY LESS THAN WOULD BE RECEIVED ABSENT THE RESTRICTIONS AND LIMITATIONS OF THIS AGREEMENT.

DEVELOPER'S INITIALS \_\_\_\_\_

**8. Defaults, Remedies and Termination.**

8.1 Defaults - General. Upon material breach of this Agreement, the non-defaulting party shall give written notice of default to the other party within thirty (30) days, which notice shall identify the breach and demand a cure. If default is not cured by the defaulting party within thirty (30) days, the noticing party may terminate this Agreement and/or seek remedy pursuant to this Agreement. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8.2 Legal Actions.

8.2.1 Institution of Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Fresno, State of California, or in the appropriate Federal District Court (for Fresno County) in the State of California.

8.2.2 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

8.3 Termination.

8.3.1 Termination by the City Prior to Conveyance. City may terminate this Agreement prior to conveyance of title to the Developer for the following breaches if such breach is not cured within thirty (30) days after written demand by the City:

- a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein related to the Property, or the buildings or improvements thereon in violation of this Agreement; or
  - b. There is any significant change in the ownership or identity of the Developer;
- or

- c. The Developer does not submit evidence that it has the necessary financing for building on the Property; or
- d. The Developer fails to submit to City the Construction Plans; or
- e. The Developer is in breach or default with respect to any other obligation of the Developer under this Agreement.

8.4 Reversionary Interest. As set forth above in **Section 2**, if Developer fails to complete the construction of the housing on the Property within the time period set forth in the Schedule of Performance (**Exhibit 4**), title to the Property shall automatically revert back to City.

8.5 Remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

## **9. Miscellaneous Provisions.**

9.1 Enforced Delay; Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to events or occurrences beyond the control of the party who would be in default such as unusually severe weather or inability to secure necessary labor, materials or tools. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall run from the time of commencement of the cause. Notice by the party claiming such extension shall be sent to the other party within thirty (30) days after the commencement of the cause. If notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the party claiming the extension shall be liable for damages caused for the time period between the commencement of the cause and the providing of notice. Times of performance under this Agreement may also be extended in writing by City and Developer.

9.2 Inspection of Books and Records. City has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement.

9.3 Integration. This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or a contemporaneous oral agreement, nor explained or supplement by evidence of consistent additional terms. Any amendment shall be in writing, subject to approval of both parties.

9.4 Interpretation. Each of the Parties acknowledges and agrees that this Agreement is an accord to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.



9.5 Further Documents and Actions. Each of the Parties agrees to execute such further documents and take such further actions as may be reasonably necessary or appropriate to effectuate the terms of this Agreement.

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(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, City and Developer have signed this Agreement as set forth below.

CITY OF CLOVIS, acting as the Housing  
Successor to the former Clovis Community  
Development Agency

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Luke Serpa, City Manager

“CITY”

HABITAT FOR HUMANITY  
A California nonprofit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Chief Executive Officer

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Board Chairman

“DEVELOPER”

ATTEST:

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

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
David J. Wolfe  
City Attorney

Dated: \_\_\_\_\_

# **EXHIBIT 1**

## **Legal Description of the Property**

### **TO BE INSERTED**

APN: 491-191-17

## **Exhibit 2 – Map of the Property**

**TO BE INSERTED**

# Exhibit 3 Form of Grant Deed

## GRANT DEED

RECORDING REQUESTED BY AND )  
WHEN RECORDED, RETURN TO AND )  
MAIL TAX STATEMENTS TO: )  
 )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)

### GRANT DEED WITH REVERSIONARY INTEREST

### GRANT DEED CONTAINING COVENANTS, CONDITIONS AND RESTRICTIONS GOVERNING USE AND RESALE OF THE PROPERTY

**1421 Fourth Street, Clovis, CA 93612, APN No. 491-191-17**

For a valuable consideration, receipt of which is hereby acknowledged,

The City of Clovis, acting as the Housing Successor to the former Clovis Community Development Agency (“Grantor” or “City”), hereby grants to **Habitat for Humanity Fresno, Inc.** (“Grantee” or “Purchaser”) the real property described in **Attachment A** (“Property”) attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record.

Grantor is also conveying the Property to Grantor with a Reversionary Interest in City should Grantee fail to timely complete improvements to the Property.

Grantee understands that one of Grantor’s purposes is to provide affordable housing to residents of the City of Clovis. In order to maintain Grantor’s ability to provide affordable housing, Grantor has agreed to convey the Property subject to, and Grantee has agreed to be bound by, covenants, conditions, and restrictions limiting Grantees right to use and resell the Property by establishing resale, financing, and occupancy restrictions; and by reserving Grantor an option to designate eligible subsequent purchasers.

The Property is conveyed in accordance with and subject to the applicable Redevelopment Plan and pursuant to the Real Property Disposition and Development Agreement entered into between Grantor and Grantee dated \_\_\_\_\_, 2020 (“Agreement”), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference.

NOW, THEREFORE, the following Reversionary Interest and Covenants, Conditions, and Restrictions (“Restrictive Covenants”) shall run with the land:

I. REVERSIONARY INTEREST.

1. Failure to Timely Complete Construction. If Grantee fails to complete construction of the residence on the Property within the time period set forth in **Exhibit 4** (Schedule of Performance) of the Agreement, and Grantee fails to obtain an extension of time for the completion of this obligation, title of any and all uncompleted lots shall automatically revert back to City.

2. Failure to Cure Breach of Agreement. If Grantee fails to cure a breach of the Agreement within thirty (30) days after written notice thereof by City, title to the Property shall automatically revert back to City.

3. Effect of Title Reverting to City. If title to the Property reverts back to City, City shall be entitled to reenter and take possession of the Property, with all improvements thereon. Any and all buildings and fixtures on the Property shall, without compensation to Grantee, become the property of City free and clear of all claims to or against them by Grantee, or any third party. These rights are to be interpreted in light of the fact that the City conveyed the Property to Grantee at no cost.

4. Expiration of Reversionary Interest. The Reversionary Interest for the Property shall terminate upon sale of the Property to the first owner occupant as set forth in the Agreement.

II. RESTRICTIVE COVENANTS.

1. Real Property Disposition and Development Agreement. The Property is conveyed in accordance with the Agreement.

2. Definition of Purchaser: Acknowledgment and Certification. All subsequent purchasers or successors (“Purchaser”) shall certify his/her acknowledgment of these Restrictive Covenants by executing a form substantially the same as **Attachment B**. The term Purchaser as hereinafter used in these Restrictive Covenants shall mean Grantee and all subsequent Purchasers.

3. Single Family Residence: Residency. Purchaser hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any part thereof, that after construction of the single family home and sale to the first owner occupant as set forth in the Agreement, Purchaser, such successors and such assigns, shall maintain and use the Property only as a single-family residence and that Purchaser will occupy the Property as his/her principal place of residence. Purchaser shall be considered as occupying the Property as a principal place of residence if Purchaser is living on the Property for at least ten (10) months out of each calendar year. The Property may not be subleased or rented.

4. Restrictions on Transfer. Any transfer of the Property after sale to the first owner occupant shall be subject to the provisions of these Restrictive Covenants. Transfer shall mean any voluntary or involuntary sale, assignment or transfer of ownership of the Property or of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred but title is retained by the transferor; except that Transfer shall not mean any of the following:

(a) As to any Purchaser who at the time of the purchase took title to the Property by him/herself but subsequently marries or files a Declaration of Domestic Partnership:

(1) a transfer of the Property without consideration from the Purchaser to the Purchaser and the Purchaser's spouse/domestic partner whereby title to the Property is then held by the Purchaser and Purchaser's spouse/domestic partner; or

(2) a devise or inheritance of the Property to the Purchaser's spouse/domestic partner, whether as a surviving joint tenant or otherwise; or

(3) as part of dissolution of marriage/termination of domestic partnership proceedings, the transfer of the Property from the Purchaser to the Purchaser's spouse/domestic partner provided, however, that the spouse/domestic partner qualifies, at the time of the transfer, as subsequent purchaser under these Restrictive Covenants.

(b) As to any Purchaser(s) who at the time of the purchase took title jointly (whether as joint tenants, tenants in common, as community property, or otherwise):

(1) a devise or inheritance of the Property to the surviving Purchaser; or

(2) as part of dissolution of marriage or other legal proceedings (such as a termination of domestic partnership), the transfer of the Property from one Purchaser to the other Purchaser.

5. Maintenance of Property. Purchaser shall maintain the Property and improvements thereon, including landscaping and yard areas, in good condition and repair, free from the accumulation of debris and waste materials, consistent with community standards and in compliance with all applicable codes, including City of Clovis ordinances. If not so maintained, the City of Clovis may notify Purchaser of such conditions and of a reasonable time to correct the conditions. For landscaping and yard maintenance, a reasonable time shall be considered five (5) days. If the conditions are not corrected within the time provided the City of Clovis may perform the necessary maintenance at the expense of the Purchaser which expense will become a debt due and owing the City of Clovis. If the debt is not paid within ten (10) days of notice, the debt may be placed as a lien on the Property.

5A. Timely Payment of Loans, Taxes, and Assessments. Purchaser shall timely pay, and prior to default, all monetary obligations secured by the Property, including without limitation all loan obligations, property taxes and assessments.

6. Additions and Improvements to Property. After sale to the first owner occupant, Purchaser shall not undertake substantial remodeling or additions to the Property without the advance written approval of City. Capital Improvements in excess of Five Thousand Dollars (\$5,000.00) shall be considered a substantial remodeling or addition. See Section 12 below for a further definition of Capital Improvements.

7. Inspection of Property. Upon City’s receipt of a notice of intent to transfer as detailed in Section 9 below, City shall be given the right to enter and to inspect the Property to determine whether any violations of building, plumbing, electric, fire, housing, neighborhood preservation, or other applicable codes exist and whether the Property has been maintained in good condition. City shall notify Purchaser with regard to any noted code violations and maintenance deficiencies (collectively, the “Deficiencies”), and Purchaser shall cure the Deficiencies in a reasonable manner acceptable to the City within sixty (60) days of being notified in writing of the result of the inspections. Should Purchaser fail to cure all the Deficiencies prior to the scheduled date for the close of escrow, at the option of City or an Eligible Purchaser as defined in Section 10 below, escrow may be closed, title passed and money paid to the Purchaser subject to the condition that such funds as are necessary to pay for curing the Deficiencies, based upon written estimates obtained by City, shall be withheld from the money due Purchaser and held by the escrow holder for the purpose of curing the Deficiencies. City and/or the Eligible Purchaser shall cause the Deficiencies to be cured and, upon certification of completion of work by City, the escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to Purchaser.

8. Nondiscrimination. Purchaser agrees for itself and any successor in interest not to discriminate upon the basis of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof. Purchaser covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, age, disability, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any part thereof, nor shall Purchaser itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sublessees, or vendees in the Property.

9. Notice of Transfer or Refinancing. If after sale to the first owner occupant, Purchaser intends to transfer or to refinance the Property, Purchaser shall promptly notify City in writing of such intent. For purposes of these Restrictive Covenants, refinance includes a home equity loan or similar line of credit by which the Property secures the promissory note for the loan/line of credit. Prior to executing any documents affecting a transfer or refinancing, Purchaser shall send the notice (hereinafter referred to as the “Notice of Intent to Transfer or



Refinance”) by certified mail return receipt requested, to the City Manager, City of Clovis, 1033 Fifth Street, Clovis, California 93612. Purchaser has the right to withdraw the Notice of Intent to Transfer or Refinance prior to the opening of an escrow to purchase the Property or prior to the recording of any financing documents.

10. City’s Option to Designate an Eligible Purchaser. Upon receipt of the Notice of the Intent to Transfer, City shall have the option to designate an Eligible Purchaser, as defined in Section 11 below, to purchase the Property in the manner set forth hereunder. Within thirty (30) days of receipt by City of the Notice of Intent to Transfer, City shall: (1) notify Purchaser of the Maximum Sales Price, as defined in Section 12 herein, to be paid for the Property; (2) inspect the Property as described in Section 7, above; and (3) notify Purchaser regarding whether or not City intends to exercise its option to designate an Eligible Purchaser. The notification to Purchaser regarding the option to designate an eligible Purchaser shall be sent by certified mail return receipt requested. If City exercises this option, it shall cause an escrow to purchase the Property to be opened within thirty (30) days following such notification to Purchaser, and it shall cause the Property to be purchased by its designated Eligible Purchaser within one hundred twenty (120) days following receipt by City of Purchaser’s Notice of Intent to Transfer.

11. Transfer to Eligible Purchaser and City’s Option to Purchase Property. In the event City does not exercise its option to designate an Eligible Purchaser, transfer of the Property by Purchaser must be to an Eligible Purchaser. An Eligible Purchaser shall be defined as:

- (a) The City of Clovis;
- (b) A household with an annual income that does not exceed eighty percent (80%) of the Fresno County Area Median Income based on the applicable household size, as determined by City pursuant to the appropriate State (Department of Housing and Community Development) and Federal (U. S. Department of Housing and Urban Development) publication.

12. Determination of Maximum Sales Price. After sale to the first owner occupant, the amount of money Purchaser may receive for any transfer of the Property shall be called the “Maximum Sales Price.” The Maximum Sales Price shall be calculated as follows:

- (a) The price the first owner occupant paid for the Property.
- (b) The Purchase Price shall be adjusted by the percentage increase or decrease of the median income of a four-person household for the Fresno County Area as published by the California Department of Housing and Community Development, or its successor, from the purchase date to the date of the Notice of Intent to Transfer.
- (c) Added to the Purchase Price shall be the cost of City approved Capital Improvements in Excess of Five Thousand Dollars (\$5,000.00) (“Qualified Capital Improvements”) if within sixty (60) days upon completion of such Qualified Capital Improvements, Purchaser submitted the following to City: (1) an itemized list of the Qualified

Capital Improvements; (2) reliable proof of completion of the Qualified Capital Improvements (as evidenced e.g., by final building permits or certificate of completion); (3) reliable evidence of the cost of the Qualified Capital Improvements (as evidenced e.g., by an itemized invoice or receipt).

(d) Added to the Purchase Price shall also be the reasonable closing costs and marketing expenses as determined periodically by City.

13. Determination of Maximum Refinancing Amount. After sale to the first owner occupant, the maximum amount of any refinancing, shall be ninety percent (90%) of the Maximum Sales Price, whether refinancing is a new first deed of trust, a second (or other) deed of trust, a home equity loan, or similar line of credit by which the Property secures the promissory note for the deed of first/loan/line of credit.

14. Defaults and Remedies. Upon a violation of any of the provisions of these Restrictive Covenants, City shall give written notice to Purchaser by certified mail return receipt requested, specifying the nature of the violation. If the violation is not corrected to the satisfaction of City within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as City determines is necessary to correct the violation, City may declare a default under these Restrictive Covenants. Upon declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the obligations of these Restrictive Covenants, for an injunction prohibiting a proposed transfer in violation of these Restrictive Covenants, for a declaration that a transfer in violation of the provisions of these Restrictive Covenants is void, or for any such other relief at law or in equity as may be appropriate. In the event of default by Purchaser, and/or by Purchaser's transferee in those circumstances where a transfer has occurred in violation of these Restrictive Covenants, Purchaser and/or the Purchaser's transferee shall hold the City and the Owner and their respective employees or other agents harmless and reimburse the expenses, legal fees and costs for any action the City takes in enforcing the provisions of these Restrictive Covenants.

15. City's Option to Purchase Upon Default. In addition to the remedies provided City in Section 14 above, City has the option to purchase the Property effective upon the declaration of a default. City option to purchase may be exercised upon a default under these Restrictive Covenants. City shall have sixty (60) days after a default is declared to notify Purchaser of its decision to exercise its option to purchase.

16. Non-liability of City. In no event shall City become in any way liable or obligated to Purchaser or to any successor-in-interest of the Purchaser by reason of its option to purchase under either Section 11 or Section 15 herein nor shall City be in any way obligated or liable to the Purchaser or any successor-in-interest of the Purchaser for City's failure to exercise such option to purchase.

17. Invalid Provisions. If any one or more of the provisions contained in these Restrictive Covenants shall for any reason be held to be invalid, illegal or unenforceable in any respect then such provision or provisions shall be deemed severable from the remaining

provisions contained in these Restrictive Covenants, and these Restrictive Covenants shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. Controlling Law. The terms of these Restrictive Covenants shall be interpreted under the laws of the State of California.

19. Notices. All notices required herein shall be sent to the City by certified mail return receipt requested, as follows:

City Manager  
City of Clovis  
1033 Fifth Street  
Clovis, CA 93612

or such other address that the City may subsequently request in writing. Notices to the Purchaser shall be sent by certified mail return receipt requested to the Property address.

20. Interpretation of Restriction Covenants. The terms of these Restrictive Covenants shall be interpreted to encourage to the extent possible that the purchase price of and mortgage payments for the Property remain affordable to moderate, low, very low, extremely low income households.

21. Consent of City to Change terms. No changes may be made to these Restrictive Covenants without the written consent of City. City shall be considered a third party beneficiary to these restrictive Covenants.

IN WITNESS WHEREOF, the Grantor/City and Grantee/Purchaser have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF CLOVIS, acting as the Housing Successor to the former Clovis Community Development Agency

By: \_\_\_\_\_  
Luke Serpa, City Manager

ATTEST:

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

*[Additional Signatures on Next Page]*

APPROVED AS TO FORM:

LOZANO SMITH

By: \_\_\_\_\_  
David Wolfe  
City Attorney

THE GRANTEE/PURCHASER AGREES TO BE BOUND BY  
THE COVENANTS SET FORTH ABOVE.

Dated: \_\_\_\_\_, 2020. By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020. By: \_\_\_\_\_

**EXHIBIT 3**  
**GRANT DEED**  
**ATTACHMENT A**  
**Legal Description of the Property**  
**TO BE INSERTED**

**EXHIBIT 3  
GRANT DEED  
ATTACHMENT B**

**CITY OF CLOVIS HOMEOWNERSHIP ASSISTANCE PROGRAM  
ACKNOWLEDGMENT OF RESTRICTIVE COVENANTS  
GOVERNING USE AND RESALE OF THE PROPERTY INCLUDING  
OPTION TO DESIGNATE ELIGIBLE PURCHASERS**

The undersigned acknowledges as follows:

1. I/We am/are purchasing the Property at 1421 Fourth Street, Clovis, CA 93612, designated as Assessor’s Parcel Number 491-191-17.
2. There is recorded against this Property Restrictive Covenants which limit the use and resale of the Property and allow City to designate eligible purchasers. These Restrictive Covenants run with the land for perpetuity.
3. I/We meet the current requirements established by the City in order to be deemed an “Eligible Purchaser” as defined in Section 10 of the Restrictive Covenants.
4. I/We have read and fully understand these Restrictive Covenants and understand that this, in part, sets forth limitations regarding the transfer of the Property; establishes a maximum sales price for which the Property may be resold based on adjustments to the medium income of a four-person household for the Fresno County area as published by the California Department of Housing and Community Development; establishes the maximum amount for which the Property may be refinanced and establishes a definition of an Eligible Purchaser.
5. I/We have had the opportunity to ask City staff any questions I/we have about the document.
6. The original sales price paid for the Property is \$\_\_\_\_\_. The current area median income for a family of four for the Fresno County area is \$\_\_\_\_\_.
7. I/We understand that this document runs with the land and is binding on us when we decide to transfer or refinance the Property, and we agree to comply fully with its terms.

OWNERS:

Dated: \_\_\_\_\_

Signature:\_\_\_\_\_

Dated: \_\_\_\_\_

Signature:\_\_\_\_\_

## Exhibit 4 Schedule of Performance

<u>Action</u>	<u>Date</u>
1. <u>Close of Escrow.</u> City shall convey title to the escrowed Property to Developer, and Developer shall accept such conveyance.	Not later than sixty (60) days after the opening of escrow.
2. <u>Commencement of Construction of Residence on Property.</u> Developer shall obtain the required permits and commence construction of the residence on the Property.	Not later than two (2) years after the close of escrow.
3. <u>Completion of Construction of Residence on Property.</u> Developer shall complete construction of the residence on the Property.	Developer shall complete construction of the residence on the Property during the three (3) years following execution of the Agreement. Developer may apply for and receive up to two (2) separate one (1) year extensions from the City to complete construction of the residence.

# Exhibit 5

## Notice of Affordability Restrictions on Transfer of Property

RECORDING REQUESTED BY, AND )  
 WHEN RECORDED, MAIL TO: )  
 )  
 City of Clovis )  
 1033 Fifth Street )  
 Clovis, California 93612 )  
 ATTN: City Manager ) (Space above provided for Recorder)

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### NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY

**1421 Fourth Street, Clovis, CA 93612, APN No. 491-191-17**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (“Affordability Restrictions”) is recorded in association with the Grant Deed in which the City of Clovis, acting as the Housing Successor to the former Clovis Community Development Agency (“Grantor” or “City”) acting to carry out a City of Clovis Redevelopment Plan under the Community Redevelopment Law of California, grants to [NAME], [RELATIONSHIP] (“Grantee” or “Purchaser”) the real property described in **Attachment A** (“Property”) attached hereto and incorporated herein.

THESE AFFORDABILITY RESTRICTIONS are recorded as required by California Community Redevelopment Law (Health and Safety Code section 33334.3,) and sets forth the following information with respect to the Property:

- A description of the Affordability Restrictions;
- The expiration date of Affordability Restrictions;
- The street address of the Property;
- The Assessor’s Parcel Number of the Property; and,



A legal description of the Property.

### **Restrictive Covenants**

The Grantor's/City's Grant of the subject Property to the Grantee/ Purchaser is being made pursuant to certain Affordability restrictions and other covenants as set forth in the Real Property Disposition and Development Agreement entered into between Grantor and Grantee dated \_\_\_\_\_, 2020 (the "Agreement"), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference.

A complete list of the Affordability Restrictions and other restrictive covenants that run with the Property are set forth in the Agreement. The Affordability Restrictions set forth herein are not intended to be, and shall not be interpreted as, a full and complete recitation of the covenants set forth in the Agreement. The covenants set forth herein are provided strictly for the purpose of placing persons and entities on notice of the existence of certain restrictions and covenants that directly affect any transfer or refinance of the Property.

1. Notice of Transfer or Refinancing. In the event Purchaser intends to transfer or to refinance the Property, Purchaser is required to notify City in writing of such intent, as specified in Paragraph 9 of the subject Grant Deed, prior to executing any documents affecting a transfer or refinance.
  
2. City's Option to Designate an Eligible Purchaser. Upon receipt of the Notice of the Intent to Transfer, City shall have the option to designate an Eligible Purchaser to purchase the Property as specified in Paragraph 10 of the subject Grant Deed.
  
3. Transfer to Eligible Purchaser and City's Option to Purchase Property. In the event City does not exercise its option to designate an Eligible Purchaser, transfer of the Property by Purchaser must be to an Eligible Purchaser. An Eligible Purchaser shall be defined as:
  - (A) The City of Clovis;
  
  - (B) A household with an annual income that does not exceed eighty percent (80%) of the Fresno County Area Median Income

based on the applicable household size, as determined by City pursuant to the appropriate State (Department of Housing and Community Development) and Federal (U. S. Department of Housing and Urban Development) publication.

4. Maximum Sales Price. The amount of money Purchaser may receive for any transfer of the Property shall be called the “Maximum Sales Price.” The Maximum Sales Price shall be calculated as follows:

(A) The price Purchaser paid for the Property, which at the time of document recording is \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00).

*[To be set at the time of first subsequent sale per the Agreement.]*

(B) The Purchase Price shall be adjusted by the percentage increase or decrease of the median income of a four-person household for the Fresno County Area as published by the California Department of Housing and Community Development, or its successor, from the purchase date to the date of the Notice of Intent to Transfer. At the time of document recording, the Fresno County median income for a family of four is \$\_\_\_\_\_.

(C) Added to the Purchase Price shall be the cost of City approved Capital Improvements in Excess of Five Thousand Dollars (\$5,000.00) (“Qualified Capital Improvements”) if within sixty (60) days upon completion of such Qualified Capital Improvements, Purchaser submitted the following to City: (1) an itemized list of the Qualified Capital Improvements; (2) reliable proof of completion of the Qualified Capital Improvements (as evidenced e.g., by final building permits or certificate of completion); (3) reliable evidence of the cost of the Qualified Capital Improvements (as evidenced e.g., by an itemized invoice or receipt).

(D) Added to the Purchase Price shall also be the reasonable closing costs and marketing expenses as determined periodically by City.

5. Maximum Refinancing Amount. The maximum amount of any refinancing, shall be ninety percent (90%) of the Maximum Sales Price, whether refinancing is a new first deed of trust, a second (or other) deed of

trust, a home equity loan, or similar line of credit by which the Property secures the promissory note for the deed of first/loan/line of credit.

**Date of Expiration of Affordability Restrictions**

The Affordability Restrictions as set forth hereinabove are effective for not less than fifty-five (55) years from the date of the transfer of Property.

**Street Address of Property**

The street address of the Property subject to the Affordability Restrictions as set forth hereinabove is 1421 Fourth Street, Clovis, CA 93612.

**Assessor’s Parcel Number of Property**

The Assessor’s Parcel Number (APN) for the Property subject to the Affordability Restrictions as set forth hereinabove is 491-191-17.

**Legal Description of Property**

The legal description of the Property which is subject to the Affordability Restrictions is described in **Attachment 1** (“Property”) hereto and incorporated herein.

IN WITNESS WHEREOF, the Grantor/City and Grantee/Purchaser have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF CLOVIS, acting as the Housing Successor to the former Clovis Community Development Agency

By: \_\_\_\_\_  
Luke Serpa, City Manager

ATTEST:

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

APPROVED AS TO FORM:

LOZANO SMITH

By: \_\_\_\_\_  
David Wolfe  
City Attorney

THE GRANTEE/PURCHASER AGREES TO BE BOUND BY THE  
COVENANTS SET FORTH ABOVE.

Dated: \_\_\_\_\_, 2020.                      By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020.                      By: \_\_\_\_\_

**NOTICE OF AFFORDABILITY  
RESTRICTIONS ON TRANSFER OF TITLE**

**ATTACHMENT A**

**Legal Description of the Property**

**TO BE INSERTED**

# Exhibit 6

## Reversionary Interest Notice

RECORDING REQUESTED BY AND )  
WHEN RECORDED, RETURN TO AND )  
MAIL TAX STATEMENTS TO: )  
)  
City of Clovis )  
1033 Fifth Street )  
Clovis, CA 93612 )

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### NOTICE OF REVERSIONARY INTEREST

#### 1421 Fourth Street, Clovis, CA 93612, APN No. 491-191-17

WHEREAS, the CITY OF CLOVIS, acting as the Housing Successor to the former Clovis Community Development Agency (“City”) and Habitat for Humanity, a California nonprofit corporation (“Developer”), entered into a Real Property Disposition and Development Agreement (“Agreement”) dated \_\_\_\_\_, 2020 in connection with the sale of certain real property to Developer at 1421 Fourth Street, in the City of Clovis (“Property”).

WHEREAS, pursuant to Sections 2 and 8.4 of the Agreement, Developer failed to complete certain Improvements by specified dates or otherwise failed to timely cure a breach of the Agreement, and therefore Title to the identified Property has reverted back to City.

NOW, THEREFORE, City does hereby give notice that Title has reverted to City for the identified Property and City intends to exercise all rights to the Property.

IN WITNESS WHEREOF, the City has duly executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF CLOVIS, acting as the Housing Successor  
to the former Clovis Community Development Agency

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
 FROM: Administration  
 DATE: October 12, 2020  
 SUBJECT: Consider Approval – Res. 20-\_\_\_, A Resolution in Support of Proposition 20 Reducing Crime and Keeping California Safe Act.

**Staff:** Luke Serpa, City Manager  
**Recommendation:** Approve

ATTACHMENTS: 1. Proposition 20 Official Voter Information Guide – Summary  
 2. Text of Proposition 20  
 3. Draft Resolution

### CONFLICT OF INTEREST

None.

### RECOMMENDATION

For the City Council to consider a request to support Proposition 20 reducing crime and keeping California Safe Act.

### EXECUTIVE SUMMARY

Under current law, violent crimes that impact our communities such as domestic violence, date rape, sex trafficking of children, and assault with a deadly weapon, are considered “non-violent” offenses. Proposition 20 would change this and better protect our communities from violent offenders.

Thousands of offenders convicted of violent crimes, currently classified as “non-violent” are eligible for early prison release, without serving their full sentences and with no prior notice to their victims. Proposition 20 would reclassify these crimes, preventing early release and requiring notification to victims.

Proposition 20 would create two additional categories of punishable crimes with increased penalties to address “serial” theft and “organized retail” theft, crimes that deeply affect our already struggling small businesses and residents.

**BACKGROUND**

Under current law, many violent crimes in California that impact our communities such as domestic violence, date rape, the sex trafficking of children, and assault with a deadly weapon, are considered “non-violent” offenses. This means that thousands of offenders who have been convicted of these violent crimes are eligible for early prison release, without serving their full sentences and without warning to their victims. In addition, habitual retail theft is affecting the small businesses in our communities. Theft has increased by 12 to 25 percent, with losses of more than \$10 billion dollars and counting, since the passage of Proposition 47 four years ago. This puts a strain on the already decreased local sales tax revenues related to COVID-19. In 2016, Proposition 47 reduced theft under \$950 to a simple misdemeanor, allowing offenders to steal repeatedly with virtually no consequence, provided each theft is below the \$950 threshold.

Proposition 20 addresses two urgent and costly issues facing California cities — rising violent crime, and an increase in retail theft. Proposition 20 appropriately reclassifies as “violent” some heinous crimes currently categorized as “non-violent” to ensure those convicted of these crimes serve their full sentences. Proposition 20 will protect our communities from violent offenders by preventing early release of those who have committed these serious crimes. Proposition 20 creates two additional categories of punishable crimes with increased penalties to address “serial” theft and “organized retail” theft, crimes that deeply affect our already struggling small businesses and residents.

**FISCAL IMPACT**

None.

**REASON FOR RECOMMENDATION**

League of California Cities is requesting that the City of Clovis approve the attached Resolution supporting Proposition 20.

**ACTIONS FOLLOWING APPROVAL**

Staff will execute the attached Resolution.

Prepared by: John Holt, Assistant City Manager

Reviewed by: City Manager *JH*



**PROP 20 RESTRICTS PAROLE FOR CERTAIN OFFENSES CURRENTLY CONSIDERED TO BE NON-VIOLENT. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE.**

**SUMMARY**

*Put on the Ballot by Petition Signatures*

Limits access to parole program established for non-violent offenders who have completed the full term of their primary offense by eliminating eligibility for certain offenses. Fiscal Impact: Increase in state and local correctional, court, and law enforcement costs likely in the tens of millions of dollars annually, depending on implementation.

**WHAT YOUR VOTE MEANS**

**YES** A YES vote on this measure means: People who commit certain theft-related crimes (such as repeat shoplifting) could receive increased penalties (such as longer jail terms). Additional factors would be considered for the state’s process for releasing certain inmates from prison early. Law enforcement would be required to collect DNA samples from adults convicted of certain misdemeanors.

**NO** A NO vote on this measure means: Penalties for people who commit certain theft-related crimes would not be increased. There would be no change to the state’s process for releasing certain inmates from prison early. Law enforcement would continue to be required to collect DNA samples from adults only if they are arrested for a felony or required to register as sex offenders or arsonists.

**ARGUMENTS**

**PRO** Proposition 20 closes a loophole in the law that now allows convicted child molesters, sexual predators and others convicted of violent crimes to be released from prison early. Proposition 20 also expands DNA collection to help solve rapes, murders and other serious crimes, and strengthens sanctions against habitual thieves who steal repeatedly.

**CON** Prop. 20 is a prison spending scam. California already has severe and lengthy sentences—including life in prison—for serious and violent crimes. Prison special interests want to scare you into spending tens of millions on prisons which could force draconian cuts to rehabilitation, schools, mental health, and homelessness.

**FOR ADDITIONAL INFORMATION**

**FOR**

Nina Salarno Besselman, Proponent  
 Yes on 20—Keep California Safe  
**YesOn20.org** (<https://keepcalsafe.org/>)

**AGAINST**

Dana Williamson  
 Stop the Prison Spending Scam, No on Prop 20  
 1787 Tribute Road, Suite K  
 Sacramento, CA 95815  
 (916) 382-4686  
**NoOnProp20@gmail.com**  
 (<mailto:NoOnProp20@gmail.com>)  
 (<mailto:NoOnProp20@gmail.com>)  
 (<mailto:NoOnProp20@gmail.com>)**NoProp20.vote**  
 (<https://noprop20.vote/>)

## PROPOSITION 20

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### SECTION 1. Title.

This act shall be known, and may be cited, as the Reducing Crime and Keeping California Safe Act of 2018.

#### SEC. 2. Purposes.

This measure will fix three related problems created by recent laws that have threatened the public safety of Californians and their children from violent criminals. This measure will:

- (a) Reform the parole system so violent felons are not released early from prison, strengthen oversight of postrelease community supervision, and tighten penalties for violations of terms of postrelease community supervision;
- (b) Reform theft laws to restore accountability for serial thieves and organized theft rings; and
- (c) Expand DNA collection from persons convicted of drug, theft, and domestic violence related crimes to help solve violent crimes and exonerate the innocent.

#### SEC. 3. Findings and Declarations.

##### (a) Prevent Early Release of Violent Felons.

(1) Protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters, and other violent criminals should not be released early from prison.

(2) Since 2014, California has had a larger increase in violent crime than the rest of the United States. Since 2013, violent crime in Los Angeles has increased 69.5%. Violent crime in Sacramento rose faster during the first six months of 2015 than in any of the 25 largest U.S. cities tracked by the FBI.

(3) Recent changes to parole laws allowed the early release of dangerous criminals by the law's failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "non-violent offenders."

(4) As a result, these so-called "non-violent" offenders are eligible for early release from prison

after serving only a fraction of the sentence ordered by a judge.

(5) Violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of their postrelease community supervision, like the gang member charged with the murder of Whittier Police Officer Keith Boyer.

(6) Californians need better protection from such violent criminals.

(7) Californians need better protection from felons who repeatedly violate the terms of their postrelease community supervision.

(8) This measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations.

(9) Californians need better protection from such violent criminals. This measure reforms the law to define such crimes as "violent felonies" for purposes of early release.

(10) Nothing in this act is intended to create additional "strike" offenses, which would increase the state prison population.

(11) Nothing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits.

(b) Restore Accountability for Serial Theft and Organized Theft Rings.

(1) Recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal.

(2) As a result, between 2014 and 2016, California had the second highest increase in theft and property crimes in the United States while most states have seen a steady decline. According to the California Department of Justice, the value of property stolen in 2015 was \$2.5 billion with an increase of 13 percent since 2014, the largest single-year increase in at least 10 years.

(3) Individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges' ability to order individuals convicted of repeated theft crimes into effective drug treatment programs.

(4) California needs stronger laws for those who are repeatedly convicted of theft related crimes, which will encourage those who repeatedly steal to support their drug problem to enter into existing drug treatment programs. This measure enacts such reforms.

(c) Restore DNA Collection to Solve Violent Crime.

(1) Collecting DNA from criminals is essential to solving violent crimes. Over 450 violent crimes, including murder, rape, and robbery, have gone

unsolved because DNA is being collected from fewer criminals.

(2) DNA collected in 2015 from a convicted child molester solved the rape-murders of two six-year-old boys, which occurred three decades ago in Los Angeles County. DNA collected in 2016 from an individual caught driving a stolen car solved the 2012 San Francisco Bay Area rape-murder of an 83-year-old woman.

(3) Recent changes to California law unintentionally eliminated DNA collection for theft and drug crimes. This measure restores DNA collection from persons convicted for such offenses.

(4) Permitting collection of more DNA samples will help identify suspects, clear the innocent, and free the wrongly convicted.

(5) This measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted, or are found innocent.

#### SEC. 4. Parole Consideration.

SEC. 4.1. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to the inmate's incarceration. An inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) and who was committed to prison for a sex offense for which registration is required pursuant to Section 290, shall, through all efforts reasonably possible, be returned to the city that was the last legal residence of the inmate prior to incarceration or a close geographic location in which the inmate has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to the inmate's victim. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county or city wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county or city if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county or city, it shall place its

reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing the inmate to the county where the joint venture program employer is located if that employer states to the paroling authority that the employer intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:

(A) Last, first, and middle names.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole or placement on postrelease community supervision and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.

*(N) Copies of the record of supervision during any prior period of parole.*

(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Economic and Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or the secretary's designee, determines that this provision is not preempted by HIPAA.

(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer

system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other law, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:

(1) A violent felony as defined in ~~paragraphs (1) to (7), inclusive, and paragraphs (11) and (16) of subdivision (c) of Section 667.5 or subdivision (a) of Section 3040.1.~~

(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.

(3) A violation of paragraph (1), (3), or (4) of subdivision (a) of Section 261, subdivision (f), (g), or (i) of Section 286, subdivision (f), (g), or (i) of Section 287 or of former Section 288a, or subdivision (b), (d), or (e) of Section 289.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of the inmate's parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in the inmate's county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county

compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).

(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include *all records of supervision*, the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

SEC. 4.2. Section 3040.1 is added to the Penal Code, to read:

*3040.1 (a) For purposes of early release or parole consideration under the authority of Section 32 of Article I of the Constitution, Sections 12838.4 and 12838.5 of the Government Code, Sections 3000.1, 3041.5, 3041.7, 3052, 5000, 5054, 5055, 5076.2 of the Penal Code and the rulemaking authority granted by Section 5058 of the Penal Code, the following shall be defined as "violent felony offenses":*

- (1) *Murder or voluntary manslaughter.*
- (2) *Mayhem.*

(3) *Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.*

(4) *Sodomy, as defined in subdivision (c) or (d) of Section 286.*

(5) *Oral copulation, as defined in subdivision (c) or (d) of Section 287.*

(6) *Lewd or lascivious act, as defined in subdivision (a) or (b) of Section 288.*

(7) *Any felony punishable by death or imprisonment in the state prison for life.*

(8) *Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.*

(9) *Any robbery.*

(10) *Arson, in violation of subdivision (a) or (b) of Section 451.*

(11) *Sexual penetration, as defined in subdivision (a) or (j) of Section 289.*

(12) *Attempted murder.*

(13) *A violation of Section 18745, 18750, or 18755.*

(14) *Kidnapping.*

(15) *Assault with the intent to commit a specified felony, in violation of Section 220.*

(16) *Continuous sexual abuse of a child, in violation of Section 288.5.*

(17) *Carjacking, as defined in subdivision (a) of Section 215.*

(18) *Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.*

(19) *Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.*

(20) *Threats to victims or witnesses, as defined in subdivision (c) of Section 136.1.*

(21) *Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.*

(22) *Any violation of Section 12022.53.*

(23) *A violation of subdivision (b) or (c) of Section 11418.*

(24) *Solicitation to commit murder.*

(25) *Felony assault with a firearm, in violation of paragraph (2) of subdivision (a) and subdivision (b) of Section 245.*

(26) *Felony assault with a deadly weapon, in violation of paragraph (1) of subdivision (a) of Section 245.*

(27) *Felony assault with a deadly weapon upon the person of a peace officer or firefighter, in violation of subdivisions (c) and (d) of Section 245.*

(28) *Felony assault by means of force likely to produce great bodily injury, in violation of paragraph (4) of subdivision (a) of Section 245.*

(29) *Assault with caustic chemicals, in violation of Section 244.*

(30) *False imprisonment, in violation of Section 210.5.*

(31) *Felony discharging a firearm, in violation of Section 246.*

(32) *Discharge of a firearm from a motor vehicle, in violation of subdivision (c) of Section 26100.*

(33) *Felony domestic violence resulting in a traumatic condition, in violation of Section 273.5.*

(34) *Felony use of force or threats against a witness or victim of a crime, in violation of Section 140.*

(35) *Felony resisting a peace officer and causing death or serious injury, in violation of Section 148.10.*

(36) *Felony hate crime punishable pursuant to Section 422.7.*

(37) *Felony elder or dependent adult abuse, in violation of subdivision (b) of Section 368.*

(38) *Rape, in violation of paragraph (1), (3), or (4) of subdivision (a) of Section 261.*

(39) *Rape, in violation of Section 262.*

(40) *Sexual penetration, in violation of subdivision (b), (d), or (e) of Section 289.*

(41) *Sodomy, in violation of subdivision (f), (g), or (i) of Section 286.*

(42) *Oral copulation, in violation of subdivision (f), (g), or (i) of Section 287.*

(43) *Abduction of a minor for purposes of prostitution, in violation of Section 267.*

(44) *Human trafficking, in violation of subdivision (a), (b), or (c) of Section 236.1.*

(45) *Child abuse, in violation of Section 273ab.*

(46) *Possessing, exploding, or igniting a destructive device, in violation of Section 18740.*

(47) *Two or more violations of subdivision (c) of Section 451.*

(48) *Any attempt to commit an offense described in this subdivision.*

(49) *Any felony in which it is pled and proven that the defendant personally used a dangerous or deadly weapon.*

(50) *Any offense resulting in lifetime sex offender registration pursuant to Sections 290 to 290.009, inclusive.*

(51) *Any conspiracy to commit an offense described in this section.*

(b) *The provisions of this section shall apply to any inmate serving a custodial prison sentence on or after the effective date of this section, regardless of when the sentence was imposed.*

SEC. 4.3. Section 3040.2 is added to the Penal Code, to read:

3040.2. (a) *Upon conducting a nonviolent offender parole consideration review, the hearing officer for the Board of Parole Hearings shall consider all relevant, reliable information about the inmate.*

(b) *The standard of review shall be whether the inmate will pose an unreasonable risk of creating victims as a result of felonious conduct if released from prison.*

(c) *In reaching this determination, the hearing officer shall consider the following factors:*

(1) *Circumstances surrounding the current conviction.*

(2) *The inmate's criminal history, including involvement in other criminal conduct, both juvenile and adult, which is reliably documented.*

(3) *The inmate's institutional behavior, including both rehabilitative programming and institutional misconduct.*

(4) *Any input from the inmate, any victim, whether registered or not at the time of the referral, and the prosecuting agency or agencies.*

(5) *The inmate's past and present mental condition as documented in records in the possession of the Department of Corrections and Rehabilitation.*

(6) *The inmate's past and present attitude about the crime.*

(7) *Any other information which bears on the inmate's suitability for release.*

(d) *The following circumstances shall be considered by the hearing officer in determining whether the inmate is unsuitable for release:*

(1) *Multiple victims involved in the current commitment offense.*

(2) *A victim was particularly vulnerable due to age or physical or mental condition.*

(3) *The inmate took advantage of a position of trust in the commission of the crime.*

(4) *The inmate was armed with or used a firearm or other deadly weapon in the commission of the crime.*

(5) *A victim suffered great bodily injury during the commission of the crime.*

(6) *The inmate committed the crime in association with a criminal street gang.*

(7) *The inmate occupied a position of leadership or dominance over other participants in the commission of the crime or the inmate induced others to participate in the commission of the crime.*

(8) *During the commission of the crime, the inmate had a clear opportunity to cease but instead continued.*

(9) *The inmate has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the inmate is currently committed to prison.*

(10) *The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime.*

(11) *The inmate was on probation, parole, postrelease community supervision, or mandatory supervision or was in custody or had escaped from custody at the time of the commitment offense.*

(12) *The inmate was on any form of pre- or post-conviction release at the time of the commitment offense.*

(13) *The inmate's prior history of violence, whether as a juvenile or adult.*

(14) *The inmate has engaged in misconduct in prison or jail.*

(15) *The inmate is incarcerated for multiple cases from the same or different counties or jurisdictions.*

(e) *The following circumstances shall be considered by the hearing officer in determining whether the inmate is suitable for release:*

(1) *The inmate does not have a juvenile record of assaulting others or committing crimes with a potential of harm to victims.*

(2) *The inmate lacks any history of violent crime.*

(3) *The inmate has demonstrated remorse.*

(4) *The inmate's present age reduces the risk of recidivism.*

(5) *The inmate has made realistic plans if released or has developed marketable skills that can be put to use upon release.*

(6) *The inmate's institutional activities demonstrate an enhanced ability to function within the law upon release.*

(7) *The inmate participated in the crime under partially excusable circumstances which do not amount to a legal defense.*

(8) *The inmate had no apparent predisposition to commit the crime but was induced by others to participate in its commission.*

(9) *The inmate has a minimal or no criminal history.*

(10) *The inmate was a passive participant or played a minor role in the commission of the crime.*

(11) *The crime was committed during or due to an unusual situation unlikely to reoccur.*

SEC. 4.4. Section 3040.3 is added to the Penal Code, to read:

3040.3. (a) *An inmate whose current commitment includes a concurrent, consecutive, or stayed sentence for an offense or allegation defined as violent by subdivision (c) of Section 667.5 or Section 3040.1 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.*

(b) *An inmate whose current commitment includes an indeterminate sentence shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.*

(c) *An inmate whose current commitment includes any enhancement which makes the underlying offense violent pursuant to subdivision (c) of Section 667.5 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.*

(d) *For purposes of Section 32 of Article I of the Constitution, the "full term" of the "primary offense" shall be calculated based only on actual days served on the commitment offense.*

SEC. 4.5. Section 3040.4 is added to the Penal Code, to read:

3040.4. *Pursuant to subdivision (b) of Section 28 of Article I of the Constitution, the department shall give reasonable notice to victims of crime prior to an inmate being reviewed for early parole and release. The department shall provide victims with the right to be heard regarding early parole consideration and to participate in the review process. The department shall consider the safety of the victims, the victims' family, and the general public when making a determination on early release.*

(a) *Prior to conducting a review for early parole, the department shall provide notice to the prosecuting agency or agencies and to registered victims, and shall make reasonable efforts to locate and notify victims who are not registered.*

(b) *The prosecuting agency shall have the right to review all information available to the hearing officer, including, but not limited to, the inmate's central file, documented adult and juvenile criminal history, institutional behavior, including both rehabilitative programming and institutional misconduct, any input from any person or organization advocating on behalf of the inmate, and any information submitted by the public.*

(c) *A victim shall have a right to submit a statement for purposes of early parole consideration, including a confidential statement.*

(d) *All prosecuting agencies, any involved law enforcement agency, and all victims, whether or not registered, shall have the right to respond to the board in writing.*

(e) Responses to the board by prosecuting agencies, law enforcement agencies, and victims must be made within 90 days of the date of notification of the inmate's eligibility for early parole review or consideration.

(f) The board shall notify the prosecuting agencies, law enforcement agencies, and the victims of the nonviolent offender parole decision within 10 days of the decision being made.

(g) Within 30 days of the notice of the final decision concerning nonviolent offender parole consideration, the inmate and the prosecuting agencies may request review of the decision.

(h) If an inmate is denied early release under the nonviolent offender parole provisions of Section 32 of Article I of the Constitution, the inmate shall not be eligible for early nonviolent offender parole consideration for two calendar years from the date of the final decision of the previous denial.

SEC. 4.6. Section 3041 of the Penal Code is amended to read:

3041. (a) (1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth

offender parole eligibility date or elderly parole eligible eligibility date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b) (1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. *The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.*

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing



date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

SEC. 4.7. Section 3454 of the Penal Code is amended to read:

3454. (a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate,

structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a city or county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.

(c) As used in this title, "flash incarceration" is a period of detention in a city or county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.

*(d) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.*

SEC. 4.8. Section 3455 of the Penal Code is amended to read:

3455. (a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, *or if the supervised person has violated the terms of the supervised person's release for a third time*, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:

(1) Return the person to postrelease community supervision with modifications of conditions, if

appropriate, including a period of incarceration in a county jail.

(2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(b) (1) At any time during the period of postrelease community supervision, if a peace officer, *including a probation officer*, has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, *or has failed to appear at a hearing pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision*, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.

(2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.

(3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.

(c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.

(d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.

(e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

SEC. 5. DNA Collection.

SEC. 5.1. Section 296 of the Penal Code is amended to read:

296. (a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:

(1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) ~~Commencing on January 1 of the fifth year following enactment of the act that added this subparagraph, as amended, 1, 2009,~~ any adult person arrested or charged with any felony offense.

(3) Any person, including any juvenile, who is required to register under Section 290 *to 290.009, inclusive*, or Section 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.

(4) *Any person, excluding a juvenile, who is convicted of, or pleads guilty or no contest to, any of the following offenses:*

(A) *A misdemeanor violation of Section 459.5.*

(B) *A violation of subdivision (a) of Section 473 that is punishable as a misdemeanor pursuant to subdivision (b) of Section 473.*

(C) A violation of subdivision (a) of Section 476a that is punishable as a misdemeanor pursuant to subdivision (b) of Section 476a.

(D) A violation of Section 487 that is punishable as a misdemeanor pursuant to Section 490.2.

(E) A violation of Section 496 that is punishable as a misdemeanor.

(F) A misdemeanor violation of subdivision (a) of Section 11350 of the Health and Safety Code.

(G) A misdemeanor violation of subdivision (a) of Section 11377 of the Health and Safety Code.

(H) A misdemeanor violation of paragraph (1) of subdivision (e) of Section 243.

(I) A misdemeanor violation of Section 273.5.

(J) A misdemeanor violation of paragraph (1) of subdivision (b) of Section 368.

(K) Any misdemeanor violation where the victim is defined as set forth in Section 6211 of the Family Code.

(L) A misdemeanor violation of paragraph (3) of subdivision (b) of Section 647.

(4) (5) The term "felony" as used in this subdivision includes an attempt to commit the offense.

(5) (6) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of a juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

(c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

#### SEC. 6. Shoplifting.

SEC. 6.1. Section 459.5 of the Penal Code is amended to read:

459.5. (a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to ~~commit larceny~~ steal retail property or merchandise while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into

a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(c) *“Retail property or merchandise” means any article, product, commodity, item, or component intended to be sold in retail commerce.*

(d) *“Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.*

(e) *This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.*

SEC. 6.2. Section 490.2 of the Penal Code is amended to read:

490.2. (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

SEC. 7. Serial Theft.

SEC. 7.1. Section 490.3 is added to the Penal Code, to read:

490.3. (a) *This section applies to the following crimes:*

- (1) *Petty theft.*
- (2) *Shoplifting.*
- (3) *Grand theft.*
- (4) *Burglary.*
- (5) *Carjacking.*
- (6) *Robbery.*
- (7) *Crime against an elder or dependent adult within the meaning of subdivision (d) or (e) of Section 368.*
- (8) *Any violation of Section 496.*
- (9) *Unlawful taking or driving of a vehicle within the meaning of Section 10851 of the Vehicle Code.*
- (10) *Forgery.*
- (11) *Unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e.*
- (12) *Forgery of an access card pursuant to Section 484f.*
- (13) *Unlawful use of an access card pursuant to Section 484g.*
- (14) *Identity theft pursuant to Section 530.5.*
- (15) *Theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.*

(b) *Notwithstanding paragraph (3) of subdivision (h) of Section 1170, paragraphs (2) and (4) of subdivision (a) of Section 1170.12, paragraphs (2) and (4) of subdivision (c) of Section 667, any person who, having been previously convicted of two or more of the offenses specified in subdivision (a), which offenses were committed on separate occasions, and who is subsequently convicted of petty theft or shoplifting where the value of the money, labor, or real or personal property taken exceeds two hundred fifty dollars (\$250) shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.*

(c) *This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.*

SEC. 8. Organized Retail Theft.

SEC. 8.1. Section 490.4 is added to the Penal Code, to read:

490.4. (a) *“Retail property or merchandise” means any article, product, commodity, item, or component intended to be sold in retail commerce.*

(b) *“Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.*

(c) Any person, who, acting in concert with one or more other persons, commits two or more thefts pursuant to Section 459.5 or 490.2 of retail property or merchandise having an aggregate value exceeding two hundred fifty dollars (\$250) and unlawfully takes such property during a period of 180 days is guilty of organized retail theft.

(d) Notwithstanding paragraph (3) of subdivision (h) of Section 1170, paragraphs (2) and (4) of subdivision (a) of Section 1170.12, paragraphs (2) and (4) of subdivision (c) of Section 667, organized retail theft shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(e) For purposes of this section, the value of retail property stolen by persons acting in concert may be aggregated into a single count or charge, with the sum of the value of all of the retail merchandise being the values considered in determining the degree of theft.

(f) An offense under this section may be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.

(g) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 9. Amendments.

This act shall not be amended by the Legislature except by a statute that furthers the purposes, findings, and declarations of the act and is passed in each house by rollcall vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

SEC. 10. Severability.

If any provision of this act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 11. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing parole consideration pursuant to Section 32 of Article I of the Constitution, revocation of parole and postrelease community supervision, DNA collection, or theft offenses shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their

entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

**PROPOSITION 21**

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Civil Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW**

The Rental Affordability Act

The people of the State of California do hereby ordain as follows:

SECTION 1. Title.

This act shall be known, and may be cited, as the "Rental Affordability Act."

SEC. 2. Findings and Declaration.

The people of the State of California hereby find and declare the following:

(a) More Californians (over 17 million people) are renting housing than ever before. According to the state's figures, home ownership rates in California have fallen to their lowest level since the 1940s. One quarter of older millennials (25–34 years of age) still live with their parents (U.S. Census Bureau).

(b) Rental housing prices have skyrocketed in recent years. Median rents are higher in California than any other state in the country, and among all 50 states, California has the fourth highest increase in rents.

(c) As a result of rising rental housing prices, a majority of California renters are overburdened by housing costs, paying more than 30 percent of their income toward rent. One-third of renter households spend more than 50 percent of their income toward rent.

(d) According to the National Low Income Housing Coalition, a Californian earning minimum wage would have to work 92 hours per week in order to afford renting an average one-bedroom apartment.

(e) Families faced with housing insecurity are often forced to decide between paying their rent and meeting other basic needs, which negatively impacts their health outcomes. Workers suffering from unstable housing and a deterioration in their health

20

21

**RESOLUTION NO. 20-****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS,  
CALIFORNIA IN SUPPORT OF PROPOSITION 20:  
THE REDUCING CRIME AND KEEPING CALIFORNIA SAFE ACT**

**WHEREAS**, protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters, and other violent criminals should not be released early from prison; and

**WHEREAS**, recent changes to parole laws allowed the early release of dangerous criminals by the laws' failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "non-violent" offenders; and

**WHEREAS**, as a result, these so-called "non-violent" offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge; and

**WHEREAS**, a total of 33 of the state's 58 counties saw increases in their violent crime rates in 2017; and

**WHEREAS**, this measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations; and

**WHEREAS**, nothing in this act is intended to create additional "strike" offenses which would increase the state prison population, nor is it intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits; and

**WHEREAS**, recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal; and

**WHEREAS**, grocery store operators around the state have seen unprecedented increases in the amount of losses associated with shoplifting in their stores, with some reporting up to 150% increases in these losses; and

**WHEREAS**, shoplifting incidents have started to escalate in such a manner that have endangered innocent customers and employees; and

**WHEREAS**, since 2014, the total value of stolen property has increased every year. In 2018, the total value of stolen property in California was 32% higher than the total in 2014.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Clovis does hereby support Proposition 20: The Reducing Crime and Keeping California Safe Act.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on October 12, 2020 by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

\_\_\_\_\_  
Mayor

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



# CITY *of* CLOVIS

## REPORT TO THE CITY COUNCIL

TO: Mayor and City Council  
FROM: Administration  
DATE: October 12, 2020  
SUBJECT: Consider – Consideration of Design of City of Clovis Challenge Coin.

**Staff:** Mayor Bessinger  
**Recommendation:** Consider

Mayor Bessinger will give a verbal presentation on this item.

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